

C-1

DEPARTMENT OF ENVIRONMENTAL QUALITY

Title 18, Chapter 13, Article 14, Biohazardous Medical Waste and Discarded Drugs

Amend: R18-13-1401, R18-13-1402, R18-13-1403, R18-13-1406, R18-13-1407,
R18-13-1408, R18-13-1409, R18-13-1411, R18-13-1412, R18-13-1413,
R18-13-1414, R18-13-1415, R18-13-1417, R18-13-1418, R18-13-1419,
R18-13-1420

Repeal: R18-13-1404



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - REGULAR RULEMAKING

MEETING DATE: November 2, 2021

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

FROM: Council Staff

DATE: October 8, 2021

SUBJECT: Department of Environmental Quality
Title 18, Chapter 13, Solid Waste Management, Article 14

Summary:

This regular rulemaking from the Department of Environmental Quality seeks to amend rules in Title 18, Chapter 13, regarding Solid Waste Management. Specifically, the Department is seeking to amend the rules relating to the state's Biohazardous Medical Waste (BMW) and improve their overall clarity, bring standards up to date, address stakeholder concerns, and correct references and citations. Additionally, the Department indicates they are also making technical changes to the rules to fulfill a commitment made to the Council.

The Department is requesting a regular 60 day delayed effective date to this rulemaking.

The Department received an exception from Executive Order 2021-02 to proceed with a rulemaking on September 10, 2021.

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

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

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

_____ No. This rulemaking does not establish a new fee or contain a fee increase.

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

_____ Not applicable. The Department did not review or rely on a study in conducting this rulemaking.

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

_____ The Department has amended the state's Biohazardous Medical Waste (BMW) rules within the Solid Waste (SW) area to improve clarity, bring the standards up to date, address stakeholder concerns, correct references and citations, and ensure adequate protection of human health and the environment.

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

_____ The Department has examined as many potentially less intrusive or less costly alternatives as possible, but concludes most of these measures are untenable due to unique Arizona factors. The Department is balancing the least intrusive and most cost-effective approach with the need to protect the public and environment from potential disease vectors.

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

_____ Stakeholders are identified as the Department of Economic Quality, county agencies acting as regulatory authorities, exempt businesses, licensed BMW transporters, BMW generators, regulated small businesses, and community members near transporters' places of business (residential areas).

Minimal increased costs/decreased revenue (\$1,000 or less) are expected for BMW generators and regulated small businesses, and minimal to moderate (\$10,000 or less) increased costs/decreased revenue are expected for licensed BMW transporters. Minimal decreased costs/increased revenue is expected for BMW Generators, and minimal to moderate decreased costs/increased revenue is expected for licensed BMW transporters and regulated small businesses. All stakeholders benefit from clarity of the new rules and protection of human health.

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

_____ No, the Department indicates they made technical non-substantive changes to the rules between the Notice of Proposed Rulemaking and the Notice of Final Rulemaking. The changes, as described in the NFR, do not result in rules that are “substantially different” pursuant to A.R.S. § 41-1025.

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

_____ Yes, the Department adequately responded to the comments received on the proposed rules.

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

_____ Pursuant to A.R.S. § 41-1037(A), if an agency proposes an amendment to an existing rule that requires the issuance of a regulatory permit, license, or agency authorization, the agency shall use a general permit.

The Department indicates the rulemaking amends two rules that require a license or permit, R18-13-1409 and R18-13-1410. Pursuant to the exception in A.R.S. § 41-1037(A)(3), the Department states the issuance of a general permit is not technically feasible or would not meet the applicable statutory requirements, because transporters meet the requirements for licensing through criteria and information specific to their vehicles. Regarding R18-13-1410, A.R.S. §49-762(A)(3) requires individual solid waste facility plans for medical waste facilities. Therefore, it is not possible to utilize a general permit for a license under R18-13-1410 either.

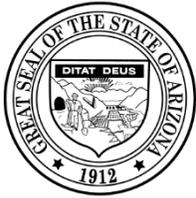
10. **Are the rules more stringent than corresponding federal law and, if so, is there statutory authority to exceed the requirements of federal law?**

_____ Not applicable. The Department indicates there are no corresponding federal laws to the rules.

11. **Conclusion**

In this regular rulemaking, the Department seeks to amend rules in Article 14, regarding Biohazardous Medical Waste. The rulemaking would result in rules that are more clear, concise, understandable, and consistent with other rules and statutes.

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



Douglas A. Ducey
Governor

ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY



Misael Cabrera
Director

September 14, 2021

Nicole Sornsin, Chair
Governor's Regulatory Review Council
100 N. 15th Avenue
Suite 402
Phoenix, Arizona 85007

Re: 18 A.A.C. 13, Article 14, ADEQ-Solid Waste Management

Dear Ms. Sornsin:

Enclosed is the final Arizona Department of Environmental Quality (ADEQ) rule package and I respectfully request that you place it on the Governor's Regulatory Review Council agenda for approval. Pursuant to A.A.C. R1-6-201, I provide the following information:

- The close of record date was May 17, 2021
- Some corrections in this rule making are related to a five-year-review report, approved by the Council on March 3, 2020
- The rule does not include any new or increased fees
- No immediate effective date is requested

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.

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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 September 25, 2020, and April 9, 2021, respectively. Please do not hesitate to call me or Mark Lewandowski, Legal Analyst, at 602-771-2230, if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Misael", with a long horizontal flourish extending to the right.

Misael Cabrera, P.E.
Director

Electronic Enclosures:

Notice of Final Rulemaking, including the economic, small business, and consumer impact statement

Agency Certificate

NOTICE OF FINAL RULEMAKING
TITLE 18. ENVIRONMENTAL QUALITY
CHAPTER 13. DEPARTMENT OF ENVIRONMENTAL QUALITY
SOLID WASTE MANAGEMENT

PREAMBLE

<u>1. Article, Part or Section Affected (as applicable)</u>	<u>Rulemaking Action</u>
R18-13-1401	Amend
R18-13-1402	Amend
R18-13-1403	Amend
R18-13-1404	Repeal
R18-13-1406	Amend
R18-13-1407	Amend
R18-13-1408	Amend
R18-13-1409	Amend
R18-13-1411	Amend
R18-13-1412	Amend
R18-13-1413	Amend
R18-13-1414	Amend
R18-13-1415	Amend
R18-13-1417	Amend
R18-13-1418	Amend
R18-13-1419	Amend
R18-13-1420	Amend

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

Authorizing Statutes: A.R.S. §§ 41-1003 and 49-104

Implementing Statute: A.R.S. § 49-761(D)

3. The effective date of the rules:

The rules will be effective 60 days after the date filed with the Secretary of State.

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

Notice of Rulemaking Docket Opening: 26 A.A.R. 2004, September 25, 2020

Notice of Proposed Rulemaking: 27 A.A.R. 535, April 09, 2021

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

Name: Terry Baer

Address: Arizona Department of Environmental Quality

Waste Programs Division

1110 W. Washington St.

Phoenix, Arizona 85007

Phone: (602) 771-4503, or (800) 234-5677, enter 771-4503(Arizona only)

Fax: (602) 771-4272

E-mail: baer.terry@azdeq.gov

Name: Mark Lewandowski

Address: Arizona Department of Environmental Quality

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6. The 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) has amended the state’s Biohazardous Medical Waste (BMW) rules within the Solid Waste (SW) area to improve clarity, bring the standards up to date, address stakeholder concerns, correct references and citations, and ensure adequate protection of human health and the environment.

Background. BMW is medical waste from regulated generators that is either soaked with blood or that has come into contact with infectious agents capable of transmitting disease to humans. Arizona’s BMW rules were promulgated in 1999 after more than 6 years of stakeholder feedback and modifications. BMW generators and transporters communicated to ADEQ over the years that updates were necessary to make the process of handling and transporting BMW more clear and protective of human health and the environment. The COVID-19 epidemic further highlighted the need to make these changes. Technical changes were also made to fulfill a commitment to the Governor’s Regulatory Review Council (GRRC). All of these changes increase the health and safety of the community without imposing undue burdens on the regulated community

Background to this Notice of Final Rulemaking. ADEQ’s rulemaking process contained significant stakeholder dialogue leading up to the formal final rule. From October 2020 through January 2021, ADEQ posted informational documents on its website and held two virtual public stakeholder meetings prior to producing a draft rule in February 2021. An additional stakeholder meeting occurred in February seeking feedback on the draft language. Stakeholders sent in comments throughout the October 2020 to February 2021 period. These meetings were well attended and answered many early stakeholder questions, particularly with regard to the potential application of any changes to their businesses. ADEQ also consulted with members of the Arizona Department of Health Services during the rulemaking process to ensure consistency.

Effective date of rule. Contingent upon approval by the Governor's Regulatory Review Council (GRRC), these rules would be effective 60 days after the date they are filed with the Secretary of State.

Subsections not amended listed as “No change”. ADEQ exercised the option in A.A.C. R1-1-502(B)(18)(f) to list most rule text subsections not amended by this rulemaking as “No change”, rather than showing long sections of text that were not changed. Occasionally, certain subsections of unchanged text were shown to provide context for nearby changes.

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:

No such study was relied upon in this instance.

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:

There is no diminution of previous grants of authority under this rule.

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

1. Identification of the rulemaking: 18 A.A.C. 13, Article 14

Brief summary of Economic Impact Statement (EIS) rule information, by rule topic:

Transport

- Conduct & Frequency. The previous rule burden required transporters to deposit BMW at a licensed facility within 24 hours if it was unrefrigerated and did not allow carriage of multiple waste streams on the same vehicle. Nonputrescible waste was subject to the same 24-hour rule, even though it can be stored at room temperature safely for much longer.
- Estimated Change. One change included allowing 48 hours of additional unrefrigerated storage time and carrying multiple U.S. Department of Transportation (DOT)-compatible wastes on the same vehicle. These changes allow transporters to carry larger amounts of waste unrefrigerated to maximize collection space, minimize inefficiency, improve customer relationships by collecting waste at one convenient time, and consolidate multiple trips.
- Cost Savings. From the self-reported transporter data gathered by 2/24/21, the cost savings estimate ranged from \$0 to \$5,000, with a mean savings of \$1,872.31 per month for each licensed transporter.

DOT Integration

- **Conduct & Frequency.** The previous burden required transporters to comply with overlapping regulations for BMW from both USDOT and ADEQ. For instance, USDOT requires a longer records-retention period than ADEQ (2 to 3 years versus 1 year). Therefore, transporters expended administrative time keeping track of compliance with both timeframes.
- **Estimated Change.** The changes mirrored USDOT requirements in the ADEQ rules, thus eliminating the additional administrative time and confusion required to comply with two different requirements. From the self-reported transporter data gathered by 2/24/21, the time savings estimates ranged from 0 to 24 hours per month, with a mean low savings of 1.23 hours per month and a mean high savings of 6.46 hours per month.
- **Cost Savings.** The time savings amounted to administrative personnel cost savings. From the self-reported transporter data gathered by 2/24/21, 31% anticipated some cost savings, 15% were unsure of cost savings, and 54% did not see any cost savings in the record retention requirement. When responses were broken down by business size (1 to 3 versus 4 to 10 transport vehicles), 36.3% of the smallest transporters (1 to 3 vehicles) anticipated a cost savings, 45.5% of the smallest transporters anticipated no savings, and 18.2% of the smallest transporters were unsure of potential savings. The larger transporters (4 to 10 vehicles) reported no anticipated savings.

Registration

- **Conduct & Frequency.** Previously, transporters were only subject to management and hygiene standards for a vehicle that was used to transport BMW for more than 30 consecutive days. However, some businesses exploited that loophole by rotating vehicles every 29 days and avoiding regulation that was intended to apply to BMW transporters in order to protect human health and the environment. That provision also created frustration and confusion regarding compliance.
- **Estimated Change.** The requirement now requires a license for vehicles that transport BMW “at least once weekly for a month.” This revision captured those in the business of transporting BMW regularly while excluding those not intended for inclusion. This modification eliminated confusion and frustration, allowed for even and fair application of the requirements, and avoided counting the number of consecutive days, which can be an administrative burden. From the self-reported transporter data gathered by 2/24/21,

84.6% of transporters spent time tracking the operation days of vehicles, with 38.5% spending between 1 and 3 hours per month and 46.2% spending between 4 and 24 hours per month. Estimates of time expended to comply with the management and hygiene standard ranged from 15 to 30 minutes per vehicle (average of 22.5 minutes), at a rate of one to two times per week (average of 1.5 used); this weekly cleaning amount averaged 33.75 minutes per week per vehicle. For transporters with 1-3 vehicles, this amounted to 33.75 to 101.25 minutes, on average, of total cleaning time weekly. For transporters with 4 to 10 vehicles, this amounted to 135 to 337.5 minutes, on average, of total cleaning time weekly. Depending upon size, transporters spent from 60 to 1,440 minutes per month tracking (a general average of 750 minutes) versus 135 to 1,350 minutes cleaning (a general average of 742.5 minutes), yielding a break-even or small time savings.

- **Cost Savings.** The modification in the rules ameliorated frustration and time needed to count the exact number of days a vehicle transported BMW and saved expenses involved in such tracking. From the self-reported transporter data gathered by 2/24/21, the tracking savings estimates ranged from \$0 to \$5,000, with a mean savings of \$875.38 per month. From survey data, the chemical used to clean was typically diluted bleach or a similarly priced product. A typical 121-ounce jug of bleach ranges in price from \$2.97 to \$21.99 (\$12.48 as a general average of these 2), depending on formulation, brand, and retailer, with the strongest concentration the CDC recommends (for bleach to water ratio) being 8 ounces of bleach to 1 gallon of water; this allows for 15.125 cleanings per 121-ounce jug of bleach, which is a material cost of around \$0.83 per cleaning. Given the above data regarding time, the employee time expended was anticipated to be the same or slightly less. Given the price per cleaning and employee time factors, tracking costs likely break even with cleaning costs. However, some stakeholders who retained insurance apprised ADEQ that their insurer required cleaning after each pick up and required picture submissions and logging; typically, this resulted in trucks being cleaned one or twice per week. One stakeholder said they were “happy to clean the truck” because they got paid for it, through an insurance program called “Xactimate.” The amount of cost savings was not disclosed to ADEQ by the stakeholder, but is an additional factor in cost savings for the cleaning requirement.

Sewering

- **Conduct & Frequency.** Due to the Hazardous Waste (HW) Pharmaceutical rule changes (effective November 3, 2020) that prohibit disposing of such substances in sewers (sewering), non-HW pharmaceuticals were subject to different requirements than HW pharmaceuticals, which caused increased compliance costs incurred through training and sorting.
- **Estimated Change.** The removal of the provisions that allowed for non-HW pharmaceutical sewerage matched EPA recommendations for non-HW pharmaceuticals and stakeholder requests for such removal. The removal also streamlined disposal and eliminated sorting and training time needed for the different types of pharmaceuticals.
- **Cost Savings.** The modification in the rules equated to fewer hours spent sorting and training at the generator level. Although there was not a precise measure localized to Arizona generators for non-hazardous waste pharmaceuticals available, training for the hazardous waste pharmaceuticals sewerage ban had already been conducted as necessitated by the incorporation of the sewerage ban into the hazardous waste rules. Therefore, no additional training is likely to be necessary and any time previously spent differentiating the types of pharmaceuticals for sewerage purposes can be used more productively.

Mail-back Records Retention

- **Conduct & Frequency.** The previous rules did not provide clear records retention requirements for mail-back sharps and created confusion and concern about compliance.
- **Estimated Change.** The change clarified that the requirement is to retain documentation that is already required under United States Postal Service mailing guidelines. There is no increase in burden other than filing.
- **Cost Savings.** This change minimizes discussions about basic compliance requirements during inspections and maximizes efficiency. There are no cost savings, nor any added cost.

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

Parties Affected:

- Arizona Department of Environmental Quality (ADEQ)

- County agencies acting as regulatory authorities
- Exempt businesses
- Licensed BMW Transporters
- BMW Generators
- Small businesses regulated
- Community members living near transporter’s places of business (residential areas)

3. Cost/Benefit Analysis:

a. Part I- Cost/Benefit Stakeholder Matrix

Description of Affected Groups	Description of Effect	Increased Cost/Decreased Revenue	Decreased Cost/Increased Revenue
A. State and Local Government Agencies			
ADEQ	Clarity of the new rule	None	None
County agencies acting as regulatory authorities	Clarity of the new rule	None	None
B. Privately Owned Businesses			
Exempt businesses	Clarity of the new rule	None	None
Licensed BMW transporters	Clarity of the new rule	Minimal to Moderate	Minimal to Moderate
BMW Generators	Clarity of the new rule	Minimal	Minimal

Small businesses regulated	Clarity of the new rule	Minimal	Minimal to Moderate
C. Community			
Individual community members	Clarity of the new rule, protection of human health	None	None

Minimal	Moderate	Substantial	Significant
\$1,000 or less	\$1,000 to \$10,000	\$10,001 or more	Cost/Burden cannot be calculated, but ADEQ expects it to be significant.

b. Part II- Individual Stakeholder Summaries/Calculations

ADEQ

1. Staffing levels will not change. No new employees need to be hired or laid off. Current staff will update their inspection procedures to meet the new rules. Minimal time is needed for these small updates.
2. Cash flow will not change as a result of the rules. There will be no delay in receipts or increase in expenses. There are no fee increases or decreases impacting ADEQ.
3. Barriers to industry entry will not be affected; this is an existing regulatory program so there are no startup costs for ADEQ. Business start-up costs already in existence for the regulated community will remain the same, and no additional burden is created on ADEQ for processing.

County agencies acting as regulatory authorities

1. Staffing levels will not change. No new employees need to be hired or laid off. Current staff will update their inspection procedures to meet the new rules. Minimal time is needed for these small updates.
2. Cash flow will not change as a result of the rules. There will be no delay in receipts or increase in expenses. There are no fee increases or decreases impacting the agency either way.
3. Barriers to industry entry will not be affected; this is an existing regulatory program so there are no startup costs for county agencies. Business start-up costs already in existence for the regulated community will remain the same, thus no additional burden is created on county agencies for processing.

Exempt businesses

1. Staffing levels of both small and large businesses exempt from the provisions in these rules will not change, as they are not affected. In this rulemaking, there are no additional obligations or costs for those who are exempt, nor should there be any staffing changes as a result of these rules.
2. Cash flow for exempt businesses will not be impacted, as there are no changes to these rules for exempt businesses. There would be no expected delay in receipts or increased expenses as a result of this rulemaking for businesses exempt from these rules.
3. Barriers to industry entry would not be increased for businesses exempt from these rules, as there is no change that affects those businesses under these rules. Start-up costs for exempt businesses would not change based on this rulemaking.

Licensed BMW Transporters

1. Staffing levels could vary slightly for larger businesses but are not expected to change for small businesses. The only potential increase in staffing could come from cleaning requirements. This increase would not

have an impact on those small businesses with fewer vehicles as the time required to clean appears not to require additional staff. Larger transporters who do not now comply but begin complying will need to budget some additional time, although it is unlikely there will be a need to hire people for this task. It is unlikely anyone will need to be laid off.

2. Cash flow change could occur if a transporter adds a vehicle via License Modification due to the update in R18-13-1409(J). A vehicle is required to be included on a license if used at least once each week for a month under the amended rule as opposed to the previous requirement for licensing occurring after 30 consecutive days of use. Small transporters in particular commented that they wished to see such a modification in order to level the playing field competitively. Those with additional vehicles used for transport will need to comply with proper licensing and cleaning protocols, which will allow smaller transporters with properly licensed vehicles and cleaning procedures to compete. The additional cost that could be incurred for these vehicles will vary according to R18-13-1409(D), with a license modification application fee of \$100 and fees up to \$5,000 based upon a formula in the rule that considers the number of vehicles and the actual hours spent by ADEQ. There should be no delay in receipts, however.
3. Barriers to industry entry should not change with these rule updates, and no additional business start-up costs will be imposed. No new fees are being added, and current fees are not being increased.

BMW Generators

1. Staffing levels will likely not be impacted for generators of various sizes under these rules. It is unlikely there would be a need for either additional employees or a reduction in employees, as responsibilities are largely remaining the same.

2. Cash flow is unlikely to be altered for generators of all sizes under these rules. Nothing in these rules should delay receipts or increase expenses. The practices in place for these generators will remain largely the same.
3. Barriers to industry entry will not increase. The requirements are largely the same under this rulemaking as under the previous rules for generators, so no increase in start-up costs is anticipated due to these rules.

Small businesses regulated

1. Staffing levels for small businesses regulated under these rules will be largely the same both before and after the updated rules go into effect. As examined in the previous industry-specific sections, it is unlikely small businesses will need to hire or lay off staff due to this rulemaking.
 2. Cash flow for small businesses regulated under these rules should not delay receipts or increase expenses. Although some requirements, such as cleaning, will take a small amount of additional staff time, other requirements, such as increase in storage times, should result in less staff time expended. The net effect would be no change.
 3. Barriers to industry entry are unlikely to increase under these rules. Regardless of business size, no additional start-up costs are imposed on businesses in this rulemaking.
4. Probable Impact on Employment: There is likely no impact on employment, as noted in the above sections with industry-specific discussions. There is the potential for increased hours or hiring should a stakeholder decide to expand their business to address additional COVID-19 waste. There will be no change to state employment as a result of this rule.
 5. Probable Impact on Small Businesses: A.R.S. § 41-1035 requires agencies to consider reducing the rule's impact on small businesses. ADEQ has considered the feasibility of A.R.S. § 41-1035 methods (1)-(5) along with ADEQ's statutory mandate and has weighed the benefits of each against the need to protect human health and the environment. ADEQ is already allowing the regulated community to use the least stringent requirements necessary to maintain the appropriate levels of human safety and environmental protection. Due to the statutory mandate,

the nature of these regulations, and the potential impact to the community if businesses generating or transporting BMW are not regulated, it is not possible to exempt small businesses from these requirements. However, ADEQ has employed less stringent standards when doing so would not compromise human health and safety, such as increasing putrescible waste non-refrigeration time frames up to 72 hours. This extension allows small businesses more time to gather waste and deposit the waste at an appropriate facility, thus reducing trips and associated costs. ADEQ has also simplified record-keeping requirements to align with federal requirements so there is a unified retention schedule and documentation required. These simplified requirements should reduce training time and administrative burden.

- a. Identification of Small Businesses subject to the rules: Directly affected small businesses include transporters and generators of BMW, like dentists, doctors, and veterinarians. Sharps provisions apply to tattoo shops. Individuals in their own homes will not be affected by these regulations.
- b. Compliance Costs: Additional administrative costs required for compliance with the rules are not necessary, as no provision is anticipated to increase personnel hours or outside expenses. Additional compliance costs are likely to be minor, such as the time to clean vehicles, mentioned above; since many are already providing this cleaning to comply with insurance policies, little change is anticipated, if any. Since rule provisions have been redrafted for clarity, these rules should be easier to follow than in their previous form, particularly when it comes to the licensing requirements, which have not changed. It is not anticipated that counsel will be required, although all parties are encouraged to consult with an attorney if they wish.
- c. Methods to Reduce Impact: In the beginning of the “Probable Impact on Small Businesses” section, ADEQ elaborates on its work to reduce the impact on small businesses. The rules have the least burden on business while accomplishing the regulatory objective provided in statute. ADEQ’s robust stakeholder process has allowed for unique insights into the challenges and opinions of our business community. These insights have demonstrated opportunities where ADEQ could lessen regulations while remaining appropriately protective of human health and environment. This effort also

highlighted areas where the small business owners felt strongly that regulations were necessary. ADEQ thanks its stakeholders for their collaboration and honesty.

- d. Cost/Benefit Analysis to Private Persons: ADEQ is conscious of the variation in business sizes and interests involved in this rulemaking and has worked to build consensus among stakeholders such that the rules provide a balanced benefit to all. ADEQ believes the rules may increase costs minimally, while decreasing costs elsewhere. The regulations are appropriately protective of human health and the environment while allowing for discretion. This will advance the goal of keeping Arizona an enjoyable place to live and work. Please see the above sections for additional details on costs. Various business sizes are analyzed above, as well as farther up in the EIS where impacts from specific changes are discussed.
6. Effect on Revenues to State Agencies. There will be no additional or reduced costs to ADEQ or other state agencies, nor will there be any change in state tax revenues, resulting from changes to these rules. No fee changes and no increase in business costs or decrease in business revenues are expected; therefore, no reduction in business activity that could lower state tax revenues should result from these rule changes. However, should the volume of transporters increase proportionate to COVID-19 waste volumes, the state would expect increased tax revenues due to increased business activity. In that scenario, businesses would also be increasing revenues and, incrementally, costs as they expand. However, these changes are not due to rule changes, but supply and demand in the market.
7. Less Intrusive/Costly Alternatives: ADEQ has examined as many potentially less intrusive or less costly alternatives as possible, but concludes most of these measures are untenable due to unique Arizona factors. For example, increasing unrefrigerated storage time frames for putrescible waste beyond 72 hours is not recommended in Arizona despite being utilized in other states, primarily because recommendations for safety indicate that the Arizona heat, especially in the summer months, could speed up decomposition of the putrescible waste more rapidly, thus creating potential disease vectors or nuisance odors. Additionally, the fee structure has been examined for available reduction; however, the current fees are as low as possible to account for program operational costs. The fees have been in place since 2012 without increase, despite increasing staff wages. These fees were also developed with extensive stakeholder feedback. So,

while ADEQ is not able to lower fees, ADEQ also will not increase fees. Thus, the burden on stakeholders will not increase. ADEQ has allowed maximum flexibility for storage times for non-putrescible waste (90 days), in order to allow transporters and generators to make the determinations for wastes that take refrigeration space versus those that may be safely stored elsewhere. ADEQ is balancing the least intrusive and most cost-effective approach with the need to protect the public and environment from potential disease vectors.

8. Data Basis: Searches on Lexis were conducted to compare various states' medical waste rules for comparison, including storage timeframes. State regulations from that database were used for comparison and modeling. All relevant information was summarized for stakeholders and opened for discussion prior to rule drafting, so all rules incorporate the stakeholder-preferred provisions and language. Data for impact on stakeholders was gathered via a simple anonymous online survey of transporters, wherein the link was available prior to and during the final stakeholder meeting. Participants were assured their data would be anonymous. Additional data was collected from transporters as to cleaning costs through program staff outreach to better understand current industry practices. This data comes directly from stakeholder responses targeted to specific areas and captures a small amount of their daily practices in an anonymous way so that trade secrets are not publicly shared. ADEQ thanks our stakeholders for their participation, feedback, and involvement in this rulemaking.

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

The proper Code of Federal Regulations (CFR) effective date and the corrected citation for 49 CFR 177.848 (instead of 49 CFR 176.83(b)) were omitted in the proposed rule and have been inserted into the final rule. This insertion does not change the impact of the rules and was done for administrative reasons. Additionally, stakeholder comments indicated areas where the rule conflicted with federal regulations. ADEQ addressed these conflicts through removal of contradictory language regarding a “controlled substance” being regulated under these rules, appropriate cap security for medical sharps containers (“securely closed” instead of “locking”), and elimination of the phrase “transportation management plan” when used in a manner that was inaccurate. Further, ADEQ was able to remove a redundant sentence, thanks to stakeholder input. A previous addition to the definition of biohazardous medical waste in R18-13-1401(4) that required an interpretation of what

was “sufficient virulence” was removed in favor of relying on specific examples of biohazardous medical waste. A clarification was made to the medical sharp section R18-13-1419 that states sharp-less syringes are not biohazardous medical waste if they are not composed of items listed in the biohazardous medical waste definition. Finally, ADEQ clarified that only biohazardous medical waste is regulated under these rules, so biohazardous medical items that were not yet waste would not be covered by these regulations.

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

ADEQ thanks all commenters for their input. Although ADEQ in the rulemaking process is unable to address criticisms regarding how enforcement is carried out, these concerns have been shared with the appropriate staff. Additionally, ADEQ heard stakeholder concerns about landfill non-acceptance of certain wastes. ADEQ cannot require landfills to accept specific wastes; waste acceptance decisions are made at the discretion of the landfill operator. No comments were received on the following rules: R18-13-1403, 1404, 1413, 1414, 1415, 1417, 1419, 1420.

Rule	Comments	Agency Response
R18-13-1401(3)	<p>Stericycle: The description of autoclaving is incorrect. Autoclaving is a process that relies on steam at high temperature and pressure to kill pathogens and render materials non-infectious. Autoclaving is not intended to achieve sterile conditions, nor are sterile conditions required for disposal of BMW.</p>	<p>The definition of “sterile” in Merriam-Webster includes “failing to bear or incapable of producing fruit or spores... [or]offspring...” Killing pathogens and avoiding pathogen reproductivity is consistent with the intent. Merriam-Webster defines “autoclave (verb)” as “to treat in an autoclave. Autoclave (noun) is defined as “<i>especially</i>: an apparatus (as for sterilizing) using steam under high pressure.” The current definition for “autoclave” in the rules is consistent with the dictionary meanings of these words.</p>
R18-13-1401(4)(c)	<p>Stericycle: Cerebrospinal, synovial, pleural, peritoneal, pericardial and amniotic fluid are not typically characterized as pathological wastes. To maximize protection of human health and the environment,</p>	<p>ADEQ shared several state definitions with stakeholders for pathological wastes and feedback was received. Among them was South Carolina’s definition that includes the mentioned “body fluids”, which “may be infectious due to bloodborne pathogens.” A stakeholder provided the following information</p>

	<p>ADEQ should also require that such human pathological wastes be incinerated. Human pathological wastes pose unique challenges compared to other BMW. For instance, autoclave treatment does not usually change the physical appearance of most pathological wastes, which often raises concerns with landfills. In addition, some generators of pathological wastes keep the material frozen or at very low temperatures, which can affect applicable treatment standards / methods. For these and other reasons, many states currently require that pathological waste be segregated from other BMW and treated by incineration. This is also a practice followed by Stericycle’s customers per the company’s waste acceptance policy.</p>	<p>during one of the stakeholder meetings: “OSHA from BBP Standard: Regulated Waste means liquid or semi-liquid blood or other potentially infectious materials ... and pathological and microbiological wastes containing blood or other potentially infectious materials.” Another stakeholder provided: “pathological means disease-related”. A third stated, “any and all bodily fluids and substances [are] Biohazardous”. In light of the comments received by our stakeholders, ADEQ integrated fluids into the pathological waste definition.</p> <p>The rules do not specify the method of destruction in order to allow for flexibility. There is nothing in these rules that prevents compliance with other regulations or company policies.</p>
<p>R18-13-1401(4)(f)</p>	<p>Stericycle: The proposed definition is too broad. Tattoo parlors and ear piercing operations likely generate multiple waste streams, but only those that contain human blood or blood products should be regulated as BMW. Similarly, “waste generated during the course of physically altering a human being ... where a foreign object is used to cut or pierce the skin...” is too broad, and unnecessarily captures activities that are already covered by other sections of the BMW definition. For clarity, Stericycle recommends limiting the definition to tattoo and ear piercing-related wastes that contain human blood.</p>	<p>ADEQ’s authority to regulate tattoo parlors is found in A.R.S. § 44-1342(A): “A tattoo needle and any waste exposed to human blood that is generated in the creation of a tattoo shall be disposed of in the same manner as biohazardous medical waste pursuant to § 49-761.” A.R.S. § 49-761(D)(1) and (2) specifically mentions both biohazardous medical waste and medical sharps as areas to be regulated. The commenter misstates the standard as “contain human blood” when in fact the standard is “any waste exposed to human blood that is generated in the creation of a tattoo.” ADEQ has clear authority to regulate both BMW and tattoo waste specifically. During stakeholder meetings, one commenter noted: “it is a good idea to include the language for body modification as they do not feel they are</p>

		included in this regulation but they generate a lot of sharps and most states are now including body modification businesses”. As stated, body modification and tattooing often occur on the same premises, so clarifying the regulations to cover both settings is appropriate.
R18-13-1401(8)	<p>Stericycle: The regulations at 49 CFR Part 176 govern the carriage of hazardous materials by vessel and are inapplicable to motor vehicle transportation.</p>	Transporters may comply with appropriate segregation as required by USDOT requirements under 49 CFR 177.848. ADEQ has corrected the citation such that it refers to “Carriage by Public Highway” rather than by vessel. ADEQ thanks the commenter for noticing this incorrect citation.
R18-13-1401(11)	<p>Sharps Compliance: “Discarded drug”: The definition is confusing as in the initial sentence you state that controlled substances are included as a “discarded drug”, then in the second sentence you state that controlled substances regulated by the DEA are exempt. Additionally, you exclude “hazardous waste” however this definition is specific to discarded drugs so should say “hazardous waste pharmaceuticals”.</p>	<p>ADEQ has removed “controlled substances” from the definitional term, keeping it in the exception to allow for maximum clarity surrounding the regulation of these substances. Although ADEQ’s Proposed Rule indicated no changes to the definition of “discarded drug” beyond renumbering, ADEQ has made this new correction to address any confusion.</p> <p>Duplicative regulation is to be avoided, as stated in A.R.S § 49-1002. Certain types of discarded drugs could also be classified as hazardous waste pharmaceuticals or DEA-regulated substances; therefore, ADEQ has specifically mentioned these exceptions to allow regulations in those areas to continue to govern these types of wastes. Further, “hazardous waste” as referred to in this provision is not limited to “hazardous waste pharmaceuticals”; it includes other types of “hazardous waste” regulated elsewhere in ADEQ’s rules.</p>
R18-13-1401(18)	<p>Sharps Compliance: “Medical sharps container”: this definition is too general, and given the definitions are for regulated entities, we feel a more</p>	The commenter has pointed out that OSHA, FDA, USPS, and USDOT all provide specific requirements for sharps containers. Due to the various regulations already applicable to these containers,

	<p>specific definition is required.</p>	<p>ADEQ has no reason to increase stringency and complicate compliance. ADEQ’s definition provides adequate guidance while still allowing for compliance with other regulatory entities’ requirements.</p>
<p>R18-13-1401(18)</p>	<p>Stericycle: USDOT requires that a sharps container be:</p> <ul style="list-style-type: none"> • “securely closed” • “registered under the Medical Device Regulations of FDA” • “made of puncture resistant plastic” <p>See 49 C.F.R. §173.134 Similarly, OSHA requires that a sharps container be “puncture resistant” “leakproof” and “closed.” See 29 C.F.R. § 1910.1030. A “locking cap” is not required by USDOT, OSHA or any other state where Stericycle currently operates. Stericycle operates nationwide, and its ability to efficiently serve its customers is compromised if it is required to design and use a specific sharps container only for customers in Arizona. In addition, requiring a “locking cap” is contrary to ADEQ’s stated goal of protecting human health. For example, OSHA requires that sharps containers be “easily accessible to personnel.” See 29 C.F.R. § 1910.1030(d)(4)(iii)(A)(2)(i). A locking cap can render a sharps container difficult to access, which is inconsistent with OSHA’s standard and may cause additional sharps-related injuries for generators.</p>	<p>ADEQ thanks the commenter for noticing the inconsistency. ADEQ removed the “locking cap” requirement and replaced it with a provision requiring a cap that allows for secure closure. This change allows for increased compatibility with federal regulations.</p>

	<p>State and local regulations concerning the transportation of hazardous materials must be “substantively the same” as the USDOT requirements. The “locking cap” rule does not meet that standard and is unduly burdensome.</p>	
R18-13-1402(B)	<p>For clarity, this language [in R18-13-1402(B)] should be removed from ADEQ’s BMW regulations. First, it is inaccurate. Several provisions within the BMW regulations do impose requirements on how a generator is to collect and handle BMW. See, e.g., R18-13-1406(A), R18-13-1408 and R18-13-1419. Second, to maximize protection of human health and the environment, it is important that all parties involved with handling BMW (including generators, transporters, treaters and disposers) are familiar with and follow applicable requirements related to proper classification, separation, labeling and storage. A generator that does not follow ADEQ’s regulations puts both its and Stericycle’s employees at risk.</p>	<p>ADEQ understands that the provision could cause confusion and has provided qualification to clarify that an item must first become waste before it is subject to the biohazardous medical waste regulations. Prior to becoming waste, such an item is not considered a biohazardous medical waste under these rules.</p>
R18-13-1406(B)(3)	<p>The reference is nonsensical. The regulations at 49 C.F.R. §§ 172.200 – 172.205 contain the requirements for shipping papers (or “tracking documents”). The regulations at 49 C.F.R §§ 172.300 – 172.338 relate to marking requirements. The shipping paper provisions do not cross-reference or otherwise incorporate the marking requirements. As such, under USDOT regulations, a tracking</p>	<p>For consistency and clarity, the tracking document should refer to the packaged waste in some manner to allow for identification. Under 49 CFR §172.201(a)(4), the regulations provide permissive authority to include additional information: “A shipping paper may contain additional information concerning the material provided the information is not inconsistent with the required description. Unless otherwise permitted or required by this subpart, additional information must be placed</p>

	<p>document prepared per 49 CFR 172.201 would not contain an identification number specified by 172.300. State and local regulations concerning the transportation of hazardous materials must be “substantively the same” as the USDOT requirements. The proposed identification number rule does not meet that standard.</p>	<p>after the basic description required by § 172.202(a).” Additionally, it is required under 49 CFR 172.300(b) that packaging be appropriately marked: “When assigned the function by this subpart, each carrier that transports a hazardous material shall mark each package, freight container, and transport vehicle containing the hazardous material in the manner required by this subpart.” ADEQ is linking this information in order to provide quicker comprehension for those reviewing shipping papers while also complying with USDOT regulations.</p>
R18-13-1407	<p>Kenneth Bauer: This is focused on non-sharps packaging. What about waste that contains sharps containers? Not loose sharps but containerized ones that are generally processed with the waste and sealed in red bags?</p>	<p>Medical sharps are addressed directly in R18-13-1419 rather than in R18-13-1407.</p>
R18-13-1408	<p>Sharps Compliance: Most RMW generators, except for large generators, do not have the ability to refrigerate their waste. A 72-hour limit for storage places an undue burden and expense on small to medium waste generators to have to get rid of their waste basically immediately upon full. This would be one of the strictest storage time limits of all 50 states. The majority have 30-day limit.</p>	<p>The previous rule included a 7-day accumulation limit for both putrescible and nonputrescible waste. However, putrescible waste was subject to refrigeration at any point if it would “create a nuisance.” ADEQ sought to clarify expectations for this vague provision on putrescible waste refrigeration by creating clear timelines for refrigeration (72 hours). The International Committee of the Red Cross recommends unrefrigerated storage for putrescible waste for up to 72 hours and refrigerated storage at 37-46 degrees Fahrenheit for up to one week for putrescible waste, depending on ambient temperatures. Due to Arizona’s high temperatures, longer limits may be unsafe for putrescible waste due to the more rapid decomposition and creation of dangerous conditions. The revised regulations make compliance simpler for non-putrescible waste since</p>

		<p>the potential for harm while unrefrigerated is much less. These revised regulations clarify that non-putrescible waste may be kept unrefrigerated for up to 90 days, an increase of 83 days from the previous 7-day maximum.</p> <p>Although some states, such as Florida, may allow for 30 days of storage, during that time the biohazardous medical waste must be kept in a “sanitary condition”. Dictionary definitions of “sanitary” indicate the meaning is synonymous with “aseptic, germfree, hygienic, sterile.” In this sense, ADEQ has clarified something that Florida left vague: guidelines for proper sanitation for putrescible waste. ADEQ’s rules allow a timeline triple that of Florida (90 days) for nonputrescible waste, while providing appropriate clarity for storage of putrescible waste (as indicated above). Texas, for instance, requires that such wastes are “not to create nuisances” and indicates the facility should “Maintain at a temperature of 45 degrees Fahrenheit or less any putrescible or untreated medical waste stored for longer than 72 hours after collection”.</p> <p>Utah allows up to 7 days unrefrigerated for infectious waste, with a maximum on-site storage of 60 days. Comparisons of the most populous areas in Utah and Arizona indicate that Arizona is, on average, at least 12 degrees warmer than Utah, with an average of 2.5 hours per day more sunlight. In these conditions, it is reasonable to estimate that putrescible waste will decay faster in Arizona, thus making the 7-day period of Utah too long to be appropriate.</p>
R18-13-1408	Kenneth Bauer: Just clarifying. Since the portion for the processor always referenced this section for storage requirements, does this mean that	R18-13-1412(A)(2)(a) directly addresses permitted treatment facilities and storage times. This requirement has not been changed.

	processors now have 90 days to process materials also?	
R18-13-1409	<p>Kenneth Bauer: If these changes go into effect, everyone will have to update their plans. Will that require everyone to pay for an amendment?</p>	<p>The changes in R18-13-1409 are a reorganization of current provisions to improve clarity. Additional changes were meant to add flexibility (such as allowing electronic submittal and explicitly allowing for the use of trailers). The expansion from 24 hours to 72 hours aims to provide small businesses additional time and reduce unnecessary burden. ADEQ is aware that some updates may be needed where changes have been made to the “30 consecutive days” rule. However, these changes will only affect those who were exploiting the provisions in a manner not intended by the rules in order to avoid compliance. An amendment to address such changes will cost \$100 for the application to add these vehicles onto the license. ADEQ has received no other comments that licenses or facility plans may need to be updated, so it appears that only a small number of stakeholders may need to pay for an amendment.</p>
R18-13-1409(B)(1)(f) & 1409(G)	<p>Stericycle: The requirement to submit a transportation management plan in a “department-approved format” should be removed. Stericycle is already required to prepare a transportation management plan per USDOT regulations. The obligation to prepare a similar but separate plan for ADEQ is duplicative and unnecessary. State and local regulations concerning the transportation of hazardous materials must be “substantively the same” as the USDOT requirements. The transportation management plan</p>	<p>Subsection (G) states that the transporter must have a transportation management plan, but leaves the requirements open such that a transporter may easily comply with both ADEQ and USDOT regulations using the same document. The commenter misstates the requirement regarding “department-approved format.” The term “department-approved format” does not appear in regard to transportation management plans. The phrase “department-approved format” appears only in regard to a transporter license, in R18-13-1409(B). While an application for a transporter license is required to be submitted in a “department-approved format” in (B)(1), there is no similar requirement for a</p>

	<p>requirement does not meet that standard.</p>	<p>transportation management plan. In reviewing the document for transportation management plan information, ADEQ noted a few areas that needed to be clarified. First, 1409(D) has been corrected to clarify that adding vehicles to the license via amendment will incur a fee, rather than adding a transportation management plan. Second, ADEQ noticed the redundancy in R18-13-1409(G)(1) and (2), given that both components (1) and (2) are already accounted for in the definition of “transportation management plan” at R18-13-1401(33). Therefore, ADEQ eliminated (1) and (2) from 1409(G) to remove the redundancy.</p>
<p>R18-13-1409(B)(3)</p>	<p>Stericycle: The requirement to submit all transportation vehicles for inspection by ADEQ should be removed. Stericycle is already required to submit its vehicles for annual inspection by USDOT. See 49 C.F.R. Part 396. The obligation to undergo a similar but separate inspection by ADEQ is duplicative and unnecessary. State and local regulations concerning the transportation of hazardous materials must be “substantively the same” as the USDOT requirements. The inspection requirement does not meet that standard.</p>	<p>Under 49 CFR Part 396, the Federal Motor Carrier Safety Administration (FMCSA) has clarified in guidance on § 396.17 (Periodic inspection) that: “If the State requires all vehicles registered in the State to be inspected through its mandatory program, then the motor carrier must use the State program to satisfy the Federal requirements.” Under 49 CFR § 396.3 (Inspection, repair, and maintenance), there is no specified inspection interval “because such intervals are fleet specific and, in some instances, vehicle specific” and “[t]he requirements of §396.11, 396.13, and § 396.17 are in addition to the systematic inspection, repair, and maintenance required by §396.3.” FMCSA language clarifies that state inspections are allowed and, if state inspections are mandated, the transporter “must use the State program to satisfy the Federal requirements.” Therefore, it is evident that USDOT did not preempt state inspections, and in fact contemplated them as the appropriate means to meet federal requirements. ADEQ also notes that the purpose of the respective USDOT regulations and</p>

		ADEQ regulations differ, so state inspections may account for this to ensure compliance with ADEQ rules.
R18-13-1409(K)(3)	<p>Stericycle: A transporter is not prohibited from delivering BMW to a medical waste storage, transfer, treatment or disposal facility located outside of Arizona, in which case such facility would not be "Department-approved." ADEQ has no authority to regulate or otherwise approve facilities that are not located in Arizona.</p>	ADEQ explicitly provides in R18-13-1402(C): "Provisions in this Article requiring placement in Department-approved facilities do not restrict the right to place materials in facilities that are out of state or in Indian Country." ADEQ does not purport to regulate or approve facilities located outside of Arizona, nor does ADEQ prohibit delivering BMW to an out of state facility. Rather, ADEQ regulates in-state facilities by requiring they be approved by the department.
R18-13-1411(6)	<p>Stericycle: Stericycle is a transporter of BMW in Arizona and operates transfer facilities in Arizona. To clarify, Stericycle requests that the Proposed Rule be revised to indicate that a storage or transfer facility operator need not sign the tracking document if that operator is also the transporter.</p>	To indicate the appropriate custodial record and responsibility for the waste, ADEQ requires that each party accepting the waste indicate their acceptance by signing. If ADEQ were to make an exception, the records could appear incomplete such that there is not appropriate documentation of the acceptance of waste by the treating facility. Although Stericycle contends that its role as both transporter and operator indicates the need for only one signature on behalf of Stericycle, this proposal does not provide for a complete record. Under the commenter's proposed circumstance, the individual transporter signing on behalf of Stericycle and the individual operator signing on behalf of Stericycle would not both sign, therefore the record would only show transmittal to the transporter with no indication of receipt at the operating facility. Both signatures attesting to acceptance by the transporter and acceptance at the facility are necessary to show appropriate waste chain of custody.
R18-13-1411(8)	The requirement to clean storage areas daily is unduly burdensome and should be removed. Other	The cleaning requirement is not new and should require no change in the procedures currently being used. The

	<p>requirements throughout the BMW regulations, including the obligation to use containers that are leakproof, help ensure that spills are rare. In the absence of a spill (a release of BMW from its package) the cleaning procedures described in the Proposed Rule, including applying disinfectant and removing visible particles, are unnecessary. Such extreme cleaning procedures are only appropriate in the event of a spill. Reasonable housekeeping practices as necessary to protect the public health and employee health and safety should otherwise be sufficient for a BMW storage area.</p>	<p>change in this rule language merely replaces the citation to R18-13-1407(A)(2) with the language located in R18-13-1407(A)(2). The reason for this is that R18-13-1407(A)(2) uses language regarding containers, whereas R18-13-1411 refers to storage areas. The removal of the cross-citation and the inclusion of explicitly spelled out requirements should help avoid confusion. Protection of human health and the environment via the use of an approved disinfectant and removal of visible particles is necessary to prevent the spread of disease from biohazardous medical waste. Since putrescible waste may now be stored for 72 hours unrefrigerated, there is a potential for disease vectors if the area is not appropriately cleaned.</p>
<p>R18-13-1412(A)(1)(e) & B(5)</p>	<p>Stericycle: An autoclave may have many potential applications and an autoclave manufacturer is not typically aware of, and does not always design or build according to, particular treatment standards. Operators perform efficacy testing and are often in a better position than manufacturers to certify that the equipment can meet the required treatment standards. The regulations should therefore offer the option for operators to attest that the equipment can achieve the treatment standards. As discussed above, an autoclave may have many potential applications and an autoclave manufacturer may not have specifications that are relevant to BMW treatment operations. The text should therefore be revised to clarify that only applicable manufacturer specifications need</p>	<p>ADEQ specifies “according to the manufacturer’s specifications for the unit” in order to ensure uniformity and conformity with appropriately tested uses for autoclaves. Although an operator may certainly have more specified knowledge in their field than a manufacturer of an autoclave, the manufacturer has conducted strict testing to ensure the device complies with appropriate safety standards, as set by the FDA or other appropriate governmental entities. It is ADEQ’s goal to avoid risks to the public health, which necessarily involves ensuring that autoclaves are not operated in a way inappropriate to their specifications so as to avoid explosions and dispersion of infectious materials.</p>

	be consulted.	
R18-13-1412(B)(10)	<p>Kenneth Bauer: You have changed the verbage from red bag to container. The way it is worded would mean that we would have to take our reusable barrels and put them in the autoclave. That might be a tad expensive. Please identify what containers you mean. What is the purpose of the change from Red Bag to container?</p>	<p>Stakeholders pointed out in ADEQ’s stakeholder meetings that red bags are not the only type of container that may be utilized, and therefore the word “container” seeks to be more inclusive of BMW storage. Sharps collected in puncture resistant containers, for instance, would be more clearly included in this provision than previously. ADEQ uses “container” in the Merriam-Webster definitional sense to mean “a receptacle.”</p>
R18-13-1418	<p>Sharps Compliance: We believe there needs to be a stronger statement about medication disposal that should not include on-site destruction given the dangers improperly disposed medications pose to both humans and the environment. As of August 2019, hazardous waste pharmaceuticals can no longer be flushed. As of 2014, DEA has stated that flushing controlled substances does not meet their non-retrievable requirement. Drug degradation/decomposition products utilizing carbon or charcoal-based formulas (typically pouches or bottles) cannot be placed into the trash by RMW generators. Use of drug degradation products increase medication disposal costs since generators pay for both the products themselves as well as hazardous waste pickup fees, since the resulting concoction of medications cannot be profiled as non-hazardous. The degradation pouches have not been proven to meet the DEA’s non-retrievable standard. The environmental dangers posed by the improper</p>	<p>ADEQ’s rule addresses these concerns by including the requirement to comply with federal or state laws (including the EPA and DEA) prescribing methods of destruction. This rule also indicates segregation and labeling for transport to an appropriate treatment facility is an option. However, if none of the criteria are met, the minimum requirement is some form of destruction to prevent the drugs’ use. The rules do not specify the method of destruction in order to allow for flexibility. There is nothing in this provision that prevents compliance with other regulations.</p>

	disposal of any medication, not just hazardous or controlled medications, have been well-documented and give further cause to ensure all medications are disposed of in a regulated manner.	
R18-13-1418	Stericycle: Stericycle supports the Proposed Rule's prohibition on flushing discarded drugs down a sanitary sewer. To maximize protection of human health and the environment, ADEQ should also require that such discarded drugs be incinerated.	The rules do not specify the method of destruction in order to allow for flexibility.

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)(3), "The issuance of a general permit is not technically feasible or would not meet the applicable statutory requirements," applies in this case. This rulemaking amends two existing rules that require a license or permit, R18-13-1409 and 1410. ADEQ cannot use a general permit in R18-13-1409 because transporters meet the requirements for licensing through criteria and information specific to their vehicles. Therefore, individual processing is required in order to issue licenses and conduct inspections. The transporters pay fees according to that processing, capped at a maximum fee. The vehicle-dependent nature of this license makes it impossible to use a general permit. Regarding the R18-13-1410 license, A.R.S. §49-762(A)(3) requires individual solid waste facility plans for medical waste facilities. Therefore, it is not possible to utilize a general permit for a license under R18-13-1410 either.

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

There are no federal laws that are applicable specifically to biohazardous medical waste, therefore the rule is not more stringent than federal law. A.R.S § 49-761(D) provides authorization for ADEQ to “regulate biohazardous medical waste and medical sharps” and ADEQ has considered specific areas where United States Department of Transportation (USDOT) rules may intersect with ADEQ regulations and harmonized as much as possible.

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>
49 CFR 177.848	R18-13-1401(9)
29 CFR 1910.145(f)(8)(ii)	R18-13-1401(41)
49 CFR 172.201	R18-13-1406(B); R18-13-1409(K)
49 CFR 172.300-172.338	R18-13-1406(B)(3)

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 18. ENVIRONMENTAL QUALITY

CHAPTER 13. DEPARTMENT OF ENVIRONMENTAL QUALITY - SOLID WASTE MANAGEMENT

ARTICLE 14. BIOHAZARDOUS MEDICAL WASTE AND DISCARDED DRUGS

Section

- R18-13-1401. Definitions
- R18-13-1402. Applicability
- R18-13-1403. Exemptions; Partial Exemptions
- R18-13-1404. Transition and Compliance Dates
- R18-13-1406. Biohazardous Medical Waste Transported Off Site for Treatment
- R18-13-1407. Packaging
- R18-13-1408. Storage
- R18-13-1409. Transportation; Transporter License; Annual Fee
- R18-13-1411. Storage and Transfer Facilities; Design and Operation
- R18-13-1412. Treatment Facilities; Design and Operation
- R18-13-1413. Changes to Approved Medical Waste Facility Plans
- R18-13-1414. Alternative Medical Waste Treatment Methods: Registration and Equipment Specifications
- R18-13-1415. Treatment Standards, Quantification of Microbial Inactivation and Efficacy Testing Protocols
- R18-13-1417. Disposal Facilities: Operation
- R18-13-1418. Discarded Drugs
- R18-13-1419. Medical Sharps
- R18-13-1420. Additional Handling Requirements for Certain Wastes

ARTICLE 14. BIOHAZARDOUS MEDICAL WASTE AND DISCARDED DRUGS

R18-13-1401. Definitions

In addition to the definitions in A.R.S. § 49-701, the following definitions apply in this Article:

1. ~~“Administrative consent order” means a bilateral agreement between the consenting party and the Department. A bilateral agreement is not subject to administrative appeal.~~
2. 1. “Alternative treatment technology” means a treatment method other than autoclaving or incineration that achieves the treatment standards described in R18-13-1415.
3. 2. “Approved medical waste facility plan” means the document that has been approved by the Department under A.R.S. § 49-762.04, and that authorizes the operator to accept biohazardous medical waste at its solid waste facility.
4. 3. “Autoclaving,” means using a combination of heat, steam, pressure, and time to achieve sterile conditions.
5. 4. “Biohazardous medical waste” is composed of one or more of the following:
 - a. Cultures and stocks: Discarded cultures and stocks generated in the diagnosis, treatment or immunization of a human being or animal or in any research relating to that diagnosis, treatment or immunization, or in the production or testing of biologicals.
 - b. Human blood and blood products: Discarded products and materials containing free-flowing blood or free-flowing blood components, that are saturated and/or dripping with human blood or caked with dried human blood, including items that would release blood in a liquid or semi-liquid form if compressed or broken, and items that contain serum, plasma, and other blood

- components. An item would be considered caked if it could release flakes or particles when handled.
- c. Human ~~pathologic~~pathological wastes: Discarded organs, tissues, and body parts, including cerebrospinal fluid, synovial fluid, pleural fluid, peritoneal fluid, pericardial fluid and amniotic fluid, removed during surgery, or other medical procedures, including autopsy, obstetrics, or emergency care. Human ~~pathologic~~pathological wastes do not include the head, ~~or~~ spinal column, hair, nails, or teeth.
 - d. Medical sharps: Discarded sharps that pose a stick hazard that have come into contact with blood, blood products, or pathological waste. ~~used in animal or human patient care, medical research, or clinical laboratories. Examples include~~ This includes hypodermic needles; syringes; pipettes; scalpel blades; ~~blood vials; and needles attached to tubing or syringes;~~ broken and unbroken glassware; and slides and coverslips.
 - e. Research animal wastes: Animal carcasses, body parts, and bedding of animals that have been infected with agents that produce, or may produce, human infection.
 - f. Tattoo and body modification waste: any waste generated during the course of physically altering a human being, including tattooing, ear piercing, or any other process where a foreign object is used to cut or pierce the skin.
 - g. Trauma scene waste: any crime scene, accident, or trauma clean-up wastes generated by individuals or commercial entities hired to clean crime scenes or accidents, such as sharps and materials that contain human blood and blood products.
6. 5. “Biologicals” means preparations made from living organisms or their products, including vaccines, cultures, or other biological products intended for use in diagnosing, immunizing, or treating humans or animals or in research pertaining to these activities.
 7. 6. “Biological indicator” means a representative microorganism used to evaluate treatment efficacy.
 8. “Blood and blood products” means discarded human blood and any product derived from human blood, including but not limited to blood plasma, platelets, red or white blood corpuscles, and other derived products.
 9. 7. “C-F-R-” means the Code of Federal Regulations.
 10. 8. “Chemotherapy waste” means any discarded material that has come in contact with an agent that kills or prevents the reproduction of malignant cells.
 - a. Trace contaminated chemotherapy waste includes: masks, empty drug vials, gloves, gowns, IV tubing, empty IV bags/bottles, and spill clean-up materials.
 - b. Bulk chemotherapy waste, such as full expired vials of chemotherapy drugs, is not biohazardous medical waste. Bulk chemotherapy waste may be considered hazardous wastes and must be handled according to the hazardous waste regulations if deemed a hazardous waste by the generator.
 11. 9. “Dedicated vehicle” means a motor vehicle or trailer that is pulled by a motor vehicle used by a transporter for the sole purpose of transporting biohazardous medical waste; in conjunction with other compatible waste according to the USDOT requirements, listed at 49 CFR 177.848, revised as of October 1, 2020, and no future editions or later amendments, is incorporated by reference in this rule and on file with ADEQ.
 10. “Department-approved facility” means a storage, transfer, treatment, or disposal facility that has undergone plan approval as described in R18-13-1410.
 12. 11. “Discarded drug” means any prescription medicine, or over-the-counter medicine, ~~or~~ controlled substance, used in the diagnosis, treatment, or immunization of a human being or animal, that the generator intends to abandon. The term does not include hazardous waste or controlled substances regulated by the United States Drug Enforcement Agency.

13. ~~12.~~ “Disposal facility” means a municipal solid waste landfill that has been approved by the Department under A.R.S. § 49-762.04 to accept untreated biohazardous medical waste for disposal.
- ~~14.~~ 13. “Emergency situations” include those situations where following location restrictions may result in an imminent threat to human health and the environment.
14. “Facility plan” has the meaning given to it in A.R.S. § 49-701.
- ~~15.~~ ~~“Free flowing” means liquid that separates readily from any portion of a biohazardous medical waste under ambient temperature and pressure.~~
- ~~16.~~ 15. “Generator” means a person whose act or process produces biohazardous medical waste, or a discarded drug, or whose act first causes medical waste or a discarded drug to become subject to regulation.
- ~~17.~~ 16. “Hazardous waste” has the meaning prescribed in A.R.S. § 49-921.
- ~~18.~~ 17. “Health care worker” means, with respect to R18-13-1403(B)(5), a person who provides health care services at an off-site location that is none of the following: a residence, a facility where health care is normally provided, or a facility licensed by the Arizona Department of Health Services.
- ~~19.~~ 18. “Improper disposal of biohazardous medical waste” means the disposal by a person of untreated or inadequately treated biohazardous medical waste at any place that is not approved to accept untreated biohazardous medical waste.
- ~~20.~~ 19. “Independent testing laboratory” means a testing laboratory independent of oversight activities by a provider of alternative treatment technology.
- ~~21.~~ 20. “Medical sharps container” means a vessel that is rigid, puncture resistant, leak proof, and equipped with a ~~locking~~ cap capable of being securely closed.
- ~~22.~~ 21. “Medical waste,” as defined in A.R.S. § 49-701, means *“any solid waste which is generated in the diagnosis, treatment or immunization of a human being or animal or in any research relating to that diagnosis, treatment or immunization, or in the production or testing of biologicals, and includes discarded drugs but does not include hazardous waste as defined in A.R.S. § 49-921 other than conditionally exempt small quantity generator waste.”*
- ~~23.~~ 22. “Medical waste treatment facility” or “treatment facility” means a solid waste facility approved by the Department under A.R.S. § 49-762.04 to accept and treat biohazardous medical waste from off-site generators.
- ~~24.~~ 23. “Multi-purpose vehicle” means any motor vehicle operated by a health care worker, in the course of providing health care services, where the general purpose is the non-commercial transporting of people and the hauling of goods and supplies, but not solid waste. A multi-purpose vehicle is limited to hauling biohazardous medical waste generated ~~off site by health workers in providing services.~~ “Off site” for purposes of this definition means a location other than a hospital or clinic. at a location other than a hospital or clinic.
- ~~25.~~ 24. “Off site” means a location that does not fall within the definition of “on site” contained in A.R.S. § 49-701.
- ~~26.~~ 25. “Packaging” or “properly packaged” means the use of a container or a practice under R18-13-1407.
- ~~27.~~ 26. “Putrescible waste” means waste materials capable of being decomposed rapidly by microorganisms.
- ~~28.~~ 27. “Radioactive material” has the meaning under A.R.S. § 30-651.
- ~~29.~~ 28. “Secure” means to lock out or otherwise restrict access to unauthorized personnel.
- ~~30.~~ 29. “Spill” means either of the following:
- a. Any release of biohazardous medical waste from its package while in the generator’s storage area.

- b. Any release of biohazardous medical waste from its package or the release of packaged biohazardous medical waste by the transporter at a place or site that is not a medical waste treatment or disposal facility.
- ~~31.~~ 30. “Store” or “storage” means, in addition to the meaning under A.R.S. § 49-701, either of the following:
- a. The temporary holding of properly packaged biohazardous medical waste by a generator in a designated accumulation area awaiting collection by a transporter.
 - b. The temporary holding of properly packaged biohazardous medical waste by a transporter or a treater at an approved medical waste storage facility or treatment facility.
- ~~32.~~ 31. “Technology provider” means a person that manufactures, or a vendor who supplies alternative medical waste treatment technology.
- ~~33.~~ 32. “Tracking document” means the written instrument that signifies acceptance of biohazardous medical waste by a transporter, or a transfer, storage, treatment, or disposal facility operator.
- ~~34.~~ 33. “Transportation management plan” means the transporter’s written plan consisting of both of the following:
- a. The procedures used by the transporter to minimize the exposure to employees and the general public to biohazardous medical waste throughout the process of collecting, transporting, and handling.
 - b. The emergency procedures used by the transporter for handling spills or accidents.
- ~~35.~~ 34. “Transporter” means a person engaged in the business of hauling of biohazardous medical waste from the point of generation to a Department-approved storage facility or to a Department-approved treatment or disposal facility.
- ~~36.~~ 35. “Treat” or “treatment” means, with respect to the methods used to render biohazardous medical waste less infectious: incinerating, autoclaving, or using the alternative treatment technologies prescribed in this Article.
- ~~37.~~ 36. “Treated medical waste” means biohazardous medical waste that has been treated and that meets the treatment standards of R18-13-1415. Treated medical waste that requires no further processing is considered solid waste.
- ~~38.~~ 37. “Treater” means a person, also known as an operator, who receives solid waste facility plan approval for the purpose of operating a medical waste treatment facility to treat biohazardous medical waste that is generated off site.
- ~~39.~~ 38. “Treatment certification statement” means the written document provided by either a generator who treats biohazardous medical waste on site or by a treater, to inform a solid waste disposal or recycling facility that biohazardous medical waste has been treated as prescribed in this Article; and therefore is no longer subject to regulation under this Article.
- ~~40.~~ 39. “Treatment standards” mean the levels of microbial inactivation, prescribed in R18-13-1415, to be achieved for a specific type of biohazardous medical waste.
40. “USDOT” means the United States Department of Transportation.
41. “Universal biohazard symbol” or “biohazard symbol” means a representation that conforms to the design shown in 29 CFR 1910.145(f)(8)(ii) (Office of the Federal Register, National Archives and Records Administration, July 1, 1998) and which is incorporated by reference in this rule. This incorporation does not include any later amendments or editions. Copies of the incorporated material are available for inspection at the Department of Environmental Quality and the Office of the Secretary of State.
42. “Vehicle not dedicated to the transportation of biohazardous medical waste but which is engaged in commerce” means a motor vehicle or a trailer pulled by a motor vehicle whose primary purpose

is the transporting of goods that are not solid waste or biohazardous medical waste and that is used by a transporter for the temporary transportation of biohazardous medical waste.

R18-13-1402. Applicability

- A. No change
 - 1. No change
 - 2. No change
 - 3. No change
 - 4. No change
 - 5. No change
 - 6. No change
 - 7. No change
 - 8. No change
 - 9. A person who generates medical sharps in the treatment of humans or animals.
 - 10. No change
- B. The requirements for biohazardous medical waste set out for collection do not apply to the manner in which the generator collects, or handles material prior to that material becoming biohazardous medical waste ~~inside the generator's place of business~~.
- C. Provisions in this Article requiring placement in Department-approved facilities do not restrict the right to place materials in facilities that are out of state or in Indian Country.

R18-13-1403. Exemptions; Partial Exemptions

- A. The following persons are exempt from the requirements of this Article:
 - 1. No change
 - 2. A person in possession of medical waste that is regulated by a state or federal agency due to its radioactive materials nature.
 - 3. A person who returns unused medical sharps to the manufacturer.
 - 4. No change
 - 5. No change
 - 6. No change
 - 7. ~~A person who sends used medical sharps via the United States Postal Service or private shipping agent to a treatment facility.~~
- B. The following are conditionally exempt from the requirements of this Article:
 - 1. A person who prepares human corpses, remains, and anatomical parts that are intended for interment or cremation. However, ~~if medical sharps are generated during the preparation of the human remains, they~~ must be disposed of as prescribed by this Article.
 - 2. A person who operates an emergency rescue vehicle, an ambulance, or a blood service collection vehicle in the course of providing medical services if the biohazardous medical waste is returned to the home facility for disposal. This facility is considered to be the point of generation for packaging, treatment, and disposal.
 - 3. A person who discharges ~~discarded drugs and~~ liquid and semi-liquid biohazardous medical wastes, excluding cultures and stocks, to the sanitary sewer system if the operator of the wastewater sewer system and treatment facility allows, permits, authorizes, or otherwise approves of the discharges.
 - 4. ~~A person who possesses hazardous~~ Hazardous waste regulated by A.R.S. Title 49, Chapter 5.
 - 5. A health care worker who uses a multi-purpose vehicle in the conduct of routine health care business other than transporting waste, is exempt from the requirements of R18-13-1409 if the health care worker complies with all of the following:
 - a. No change

- b. No change
- c. No change
- d. No change
- e. No change
- 6. No change
- 7. No change
- C. No change
 - 1. No change
 - 2. No change

R18-13-1404. Transition and Compliance Dates REPEAL

- ~~A. Unless otherwise specified in subsections (B) through (H), the date for compliance with this Article by generators, transporters, treaters, providers of alternative medical waste technology, and persons in possession of untreated biohazardous medical waste is the effective date of this Article.~~
- ~~B. A person who provides alternative medical waste treatment technology used by a generator before the effective date of this Article shall perform all of the following:

 - 1. Register the alternative medical waste technology with the Department as prescribed in R18-13-1414 within 90 days after the effective date of this Article.
 - 2. Not provide alternative technology 90 days after the effective date of this Article unless a Departmental registration certificate is received.
 - 3. After receipt of the Departmental registration certificate, provide to all generators using the alternative treatment technology a copy of the registration certificate and the alternative technology manufacturer's specifications.~~
- ~~C. A generator who utilizes alternative medical waste treatment technology before the effective date of this Article shall obtain, within 180 days after the effective date of this Article, the Departmental registration number and equipment specifications, described in R18-13-1414, from the technology provider. If documentation of Departmental registration is not on file with the generator, the Department shall classify biohazardous medical waste treated 180 days after the effective date of this Article using the unregistered alternative treatment technology as untreated biohazardous medical waste.~~
- ~~D. A generator who utilizes incineration or autoclaving for onsite treatment of biohazardous medical waste before the effective date of this Article may continue to do so after the effective date if the treatment requirements of R18-13-1415 and the onsite treatment requirements of R18-13-1405 are met.~~
- ~~E. A transporter of biohazardous medical waste in business on the effective date of this Article shall register, within 90 days after the effective date of this Article, as required in R18-13-1409(A).~~
- ~~F. An operator of a medical waste storage facility, who has obtained approval for a solid waste facility under A.R.S. § 49-762.04 on or before the effective date of this Article, may continue to shall store biohazardous medical waste if the facility complies in compliance with the design and operation standards prescribed in R18-13-1411. The addition of a refrigeration unit is a Type II change as described in R18-13-1413(A)(2).~~
- ~~G. An operator of a medical waste transfer facility shall obtain solid waste facility plan approval that meets the requirements of R18-13-1410 within 180 days after the effective date of this Article.~~
- ~~H. An operator of a medical waste treatment facility who has obtained Departmental plan approval to operate a medical waste treatment facility on or before the effective date of this Article may continue to operate under that plan approval if both of the following are met:

 - 1. The treater complies with the treatment standards of R18-13-1415 and the recordkeeping requirements of R18-13-1412, except as noted in the subsection below.~~

2. If the treater determines that the waste is not being treated to the applicable treatment standards of R18-13-1415, the treater informs the Department within two working days after the date on the determination, and within 30 working days enters into an administrative consent order to bring the facility into compliance.
- I. An operator of an existing municipal solid waste landfill who intends to accept untreated biohazardous medical waste shall submit a notice of a Type III change and an amended facility plan within 180 days after the effective date of this Article.
 - J. Notwithstanding subsection (H), if the Department determines that an updated solid waste facility plan is required, a treater shall submit an updated plan within 180 days after the date on the Department's determination. The treater may continue to operate under the conditions specified in subsection (H) of this Section while the Department reviews and determines whether to approve or deny the updated plan.
 - K. After the effective date of this Article, solid waste facility plan approval under A.R.S. § 49-762.04 is required for a new medical waste treatment or disposal facility before construction.

R18-13-1406. Biohazardous Medical Waste Transported Off Site for Treatment

- A. A generator of biohazardous medical waste shall cause the waste to first be package-packaged the waste as prescribed in this article R18-13-1407 before and shall subsequently either self-hauling self-haul or before store the waste as provided under R18-13-1408 and setting-set the waste out for collection by a properly licensed transporter under R18-13-1409.
- B. A generator shall obtain a copy of the tracking document signed by the transporter signifying acceptance of the biohazardous medical waste. A generator shall keep a copy of the tracking document for one year from the date of acceptance by the transporter. the period required under the USDOT requirements, as listed in 49 CFR 172.201. 49 CFR 172.201, revised as of October 1, 2020, and no future editions or later amendments, is incorporated by reference in this rule and on file with ADEQ. The tracking document shall contain all of the following information:
 1. No change
 2. No change
 3. Identification number attached to bags or containers, as specified as by the USDOT requirements, as listed in 49 CFR 172.300 - 172.338. 49 CFR 172.300 - 172.338, revised as of October 1, 2020, and no future editions or later amendments, is incorporated by reference in this rule and on file with ADEQ.
 4. No change
- C. No change
- D. No change

R18-13-1407. Non-Sharps Packaging

- A. A generator who sets biohazardous medical waste that does not include sharps out for collection for off-site treatment or disposal shall package the biohazardous medical waste in either of the following:
 1. No change
 - a. No change
 - b. No change
 - c. No change
 - d. Sealed to prevent leakage during transport, and
 - e. Puncture resistant for sharps, and
 - fe. Placed in a secondary container. This container shall be constructed of materials that will prevent breakage of the bag in storage and handling during collection and transportation and

bear the universal biohazard symbol. The secondary container may be either disposable or reusable.

2. No change
 - a. No change
 - b. No change
 - i. No change
 - ii. No change
 - iii. No change

- B. No change
- C. No change
- D. No change

R18-13-1408. Storage

A. A generator may place a container of biohazardous medical waste alongside a container of solid waste if the biohazardous medical waste is identified and not allowed to co-mingle with the solid waste. The storage area shall not be used to store substances for human consumption or for medical supplies.

B. No change

1. No change
2. No change

C. Beginning at the time the waste is set out for collection, a generator who stores biohazardous medical waste shall comply with all of the following requirements:

1. ~~Keep putrescible~~ Putrescible biohazardous medical waste may be kept unrefrigerated up to 72 hours if it does not create a nuisance. However, refrigerate putrescible biohazardous medical waste kept more than seven days. would not otherwise cause odor detectable beyond the property line or attract vermin.

2. Refrigerate at 40° F. or less from hour 72 through day 90 putrescible biohazardous medical waste kept for up to 90 days.

3. Nonputrescible biohazardous medical waste may be kept unrefrigerated for up to 90 days.

~~2.~~ 4. Store biohazardous medical waste for 90 days or less unless the generator has obtained facility plan approval under A.R.S. § 49-762.04 and is in compliance with the design and operational requirements prescribed in R18-13-1412.

~~3.~~ 5. Keep the storage area free of visible contamination.

~~4.~~ 6. Protect biohazardous medical waste from contact with water, precipitation, wind, or animals. A generator shall ensure that the waste does not provide a breeding place or a food source for insects or rodents.

~~5.~~ 7. Handle spills by re-packaging the biohazardous medical waste, re-labeling the containers and cleaning any soiled surface as prescribed in R18-13-1407(A)(2)(b).

~~6.~~ 8. Notwithstanding subsections (C)(1) ~~if odors become a problem, and (2),~~ a generator shall minimize ~~objectionable odors and~~ the off-site migration of odors and the presence of vermin. If the Department determines that a generator has not acted or adequately addressed ~~the problem, odors or vermin,~~ the Department shall require the waste to be removed or refrigerated at 40° F or less.

D. Trace chemotherapy waste shall be clearly identified as such by its label.

R18-13-1409. Transporter License; Fees; Transportation; ~~Transporter License; Annual Fee~~

A. A transporter shall obtain a transporter license from the Department as provided under subsections (B), and (C), and (D) below in addition to possessing a permit, license, or approval if required by a local health department, environmental agency, or other governmental agency with jurisdiction.

B. A transporter license is valid for 5 years after issuance. To renew the license, the licensee shall submit an application under subsection (B)(1) no later than 60 days prior to the license’s expiration and shall pay the fee provided in subsections (B)(2). With each application submitted for approval, the applicant shall remit an initial transporter license application fee in accordance with the Fee Table in subsection (B)(2). This subsection also lists the maximum fees that the Department will bill the applicant. All fees paid shall be payable to the state of Arizona. The Department shall deposit the fees paid into the Solid Waste Fee Fund established pursuant to A.R.S. § 49-881, unless otherwise authorized or required by law.

1. To apply for or to renew a transporter license, an applicant shall submit all of the following in a Department-approved format:
 - a. The name, address, and telephone number of the transportation company or entity.
 - b. All owners’ names, addresses, and telephone numbers.
 - c. All names, addresses, and telephone numbers of any agents authorized to act on behalf of the owner.
 - d. A copy of either the certificate of disclosure required by A.R.S. § 49-109 or a written acknowledgment that this disclosure is not required.
 - e. Photocopies or other evidence of the issuance of a permit, license, or approval if required by a local health department, environmental agency, or other governmental agency with jurisdiction.
 - f. A copy of the transportation management plan that ~~meets the requirements in~~ complies with subsection (G).
 - g. A list identifying each dedicated vehicle.
 - h. The initial transporter application license fee indicated in the Fee Table in (B)(2) for Transporter License Fees.
2. The new or renewal application license fee shall be calculated by multiplying the hourly rate of \$122 by the number of personnel hours involved in inspecting each transporting vehicle, evaluating the application, and approving the license, which amount shall be subtracted from the initial application license fee on deposit. Any remaining surplus of the initial application license fee on deposit shall be returned to the applicant. Any cost that exceeds the initial application license fee on deposit shall be billed to the applicant, but shall not exceed the maximum.

Fee Table

Transporter License Fees

	<u>Initial</u>	<u>Maximum</u>
<u>New Application</u>	<u>\$2,000</u>	<u>\$20,000</u>
<u>Renewal Application</u>	<u>\$2,000</u>	<u>\$20,000</u>
<u>Amendment Application</u>	<u>\$100</u>	<u>\$5,000</u>

Frequency of Application for Transporter License

<u>Year</u>	<u>Type of Application</u>	<u>Frequency</u>
<u>1</u>	<u>New</u>	<u>Once</u>

6, 11, 16, etc.	Renewal	Every 5th Year
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3. The Department may only issue a transporter license, including a renewal, if all of the items in subsection (B(1)) have been received and determined to be correct and complete, and a Department inspection of each transporting vehicle shows that the vehicle is in compliance with this Article.
- B. C.** Beginning on July 1, 2012, a transporter Transporters shall pay by the invoice due date an annual fee of \$750 for every each calendar year according to the following schedule, except that no transporter shall pay more than one annual fee in any calendar year: following payment of the new or renewal application license fee and subsequent years in which a renewal application license fee is not charged and paid, such as in the Transporters Annual Fee table.
1. ~~Transporters registered with the Department before July 1, 2012, shall pay by December 31st of each year until their registration expires and shall apply for a license according to subsections (C) and (D) of this Section no more than 60 days before their registration expires.~~
 2. ~~Transporters who have been issued a license or renewal of a license under this Section and have paid the licensing year fee as provided in subsection (D) shall pay the annual fee by December 31st of each year thereafter.~~
 3. ~~A transporter that has not been registered with the Department shall apply and obtain a license according to subsections (C) and (D) of this Section and pay an annual fee by December 31st of each year thereafter.~~

Fee Table

Transporter Annual Fee

<u>Years</u>	<u>Amount</u>
<u>2,3,4,5,7,8,9,10, etc.</u>	<u>\$750</u>

- C.** To apply for or to renew a transporter license, an applicant shall submit all of the following on a form approved by the Department:
1. ~~The name, address, and telephone number of the transportation company or entity.~~
 2. ~~All owners' names, addresses, and telephone numbers.~~
 3. ~~All names, addresses, and telephone numbers of any agents authorized to act on behalf of the owner.~~
 4. ~~A copy of either the certificate of disclosure required by A.R.S. § 49-109 or a written acknowledgment that this disclosure is not required.~~
 5. ~~Photocopies or other evidence of the issuance of a permit, license, or approval if required by a local health department, environmental agency, or other governmental agency with jurisdiction.~~
 6. ~~A copy of the transportation management plan that meets the requirements in subsection (I).~~
 7. ~~A list identifying each dedicated vehicle.~~
 8. ~~An application fee of \$2,000 which shall apply toward the licensing year fee in subsection (D)(3).~~
- D.** The Department may only issue a transporter license, including a renewal, after all of the following:
1. ~~All of the items in subsection (C) have been received and determined to be correct and complete;~~
 2. ~~A Department inspection of each transporting vehicle shows that the vehicle is in compliance with this Article; and~~
 3. ~~The applicant has paid a licensing year fee consisting of:~~

- a. ~~An amount based on the expenses associated with inspecting each transporting vehicle, evaluating the application, and approving the license, minus the application fee. The amount shall be calculated using a rate of \$122 per hour, multiplied by the number of personnel hours used in these duties.~~
 - b. ~~The annual fee of \$750 for the year as provided for in subsection (B).~~
 - c. ~~The maximum fee for both subsections (D)(3)(a) and (b) shall be \$20,000.~~
- ~~F.~~ E. ~~A transporter license is valid for five years after issuance. To renew the license, the licensee shall submit an application under subsection (C) no later than 60 days before expiration. Renewals shall be issued after payment of a licensing year fee as provided in subsection (D)(3).~~
- ~~F.~~ D. ~~Amendments. After issuance, the licensee shall submit to the Department any change to the information listed in subsection (C)(B)(1) within 30 days of its occurrence. Vehicles may only be added to the license after a Department inspection shows that the vehicle is in compliance with this Article. Amendments to the transportation management plan or amendments adding vehicles to the license shall be processed after payment of inspection fees and other expenses at the rate listed in subsection (D)(32), except that the application fee shall be \$100 and the maximum fee \$5,000.~~
- ~~G.~~ E. ~~An applicant who disagrees with the final bill received from the Department for the amendment, issuance, renewal or denial of a transporter license or vehicle inspections may make a written request to the Director for a review of the bill and may pay the bill under protest. The request for review shall specify the matters in dispute and shall be received by the Department within 10 working days of the date of receipt of the final bill.~~
- ~~H.~~ F. ~~Unless the Department and applicant agree otherwise, the review shall take place within 30 days of receipt by the Department of the request. The Director shall make a final decision as to whether the time and costs billed are correct and reasonable. The final decision shall be mailed to the applicant within 10 working days after the date of the review and is subject to appeal pursuant to A.R.S. § 49-769. A.R.S. §§ 41-1092 through 1092.12.~~
- ~~I.~~ G. ~~A person who transports biohazardous medical waste shall maintain in each transporting vehicle at all times a transportation management plan, consisting of both of the following:~~
- ~~1. Routine procedures used to minimize the exposure of employees and the general public to biohazardous medical waste throughout the process of collecting, transporting, and handling.~~
 - ~~2. Emergency procedures used for handling spills or accidents.~~
- ~~J.~~ H. ~~A transporter who accepts biohazardous medical waste from a generator shall transmit electronically or leave a physical copy of the tracking document described in R18-13-1406(B) with the person from whom the waste is accepted. A transporter shall ensure that a copy of the tracking document accompanies the person who has physical possession of the biohazardous medical waste. Upon delivery to a Department-approved transfer, storage, treatment, or disposal facility, the transporter shall obtain a copy of the tracking document, signed by a person representing the receiving facility, signifying acceptance of the biohazardous medical waste.~~
- ~~K.~~ I. ~~A transporter who transports biohazardous medical waste in a dedicated vehicle ~~dedicated to the transportation of biohazardous medical waste~~ shall ensure that the cargo box, trailer, or compartment can be secured to limit access to authorized persons at all times except during loading and unloading. In addition, the cargo box, trailer, or compartment shall be constructed in compliance with one of the following:~~
- ~~1. Have a fully enclosed, leak-proof cargo compartment consisting of a floor, sides, and a roof that are made of a non-porous material impervious to biohazardous medical waste and physically separated from the driver's compartment.~~
 - ~~2. Haul a fully enclosed, leak-proof cargo box made of a non-porous material impervious to biohazardous medical waste.~~

3. Tow a fully enclosed leak-proof trailer made of a non-porous material impervious to biohazardous medical waste.
- ~~L.~~ J.** A person who transports biohazardous medical waste in a vehicle not dedicated to the transportation of biohazardous medical waste, but that is used ~~longer than 30 consecutive days~~, at least once weekly for a month shall comply with the following:
1. Subsections (A) and ~~(D)(G)~~ through ~~(M)(K)~~.
 2. Clean the vehicle as prescribed in R18-13-1407(A)(2)(b) before it is used for another purpose.
- ~~M.~~ K.** A ~~person who transports~~ transporter of biohazardous medical waste shall comply with all of the following:
1. Accept only biohazardous medical waste packaged as prescribed in R18-13-1407.
 2. Accept biohazardous medical waste only after providing the generator with a signed tracking ~~form~~ document as prescribed in R18-13-1406(B), and keep a copy of the tracking document for ~~one year~~ the period required under the USDOT requirements, as listed in 49 CFR 172.201.
 3. Deliver biohazardous medical waste to a Department-approved biohazardous medical waste storage, transfer, treatment, or disposal facility within ~~24 hours of collection or refrigerate the waste for not more than 90 days at 40° F or less until delivery~~ the following timeframes:
 - a. 72 hours of collection, if putrescible and unrefrigerated; or
 - b. 90 days of collection, if putrescible and refrigerated at 40° F or less from hour 72 through day 90; or
 - c. 90 days of collection, if nonputrescible and unrefrigerated.
 4. Not hold biohazardous medical waste longer than specified under subsection (K)(3) ~~96 hours in a refrigerated vehicle~~ unless the vehicle is parked at a Department-approved facility.
 5. ~~Not~~ Except in emergency situations, not unload, reload, or transfer the biohazardous medical waste to another vehicle in any location other than a Department-approved facility, ~~except in emergency situations~~. Combination vehicles or trailers may be uncoupled and coupled to another cargo vehicle or truck trailer as long as the biohazardous medical waste is not removed from the cargo compartment.
- ~~N.~~** ~~As used in this Section, “licensing year” means the calendar year in which the Department issues a license or a renewal of a license under this Section.~~

R18-13-1411. Storage and Transfer Facilities; Design and Operation

An operator of a storage facility or transfer facility shall comply with all of the following design and operation requirements:

1. No change
2. No change
3. No change
4. No change
5. Specify in the application for facility plan approval the maximum storage time that biohazardous medical waste will remain at the facility. If ~~the putrescible~~ putrescible biohazardous medical waste will be stored for more than ~~24 hours~~, 72 hours, the operator shall equip the facility with a refrigerator to refrigerate ~~the putrescible~~ putrescible biohazardous medical waste. The operator of the facility shall maintain the temperature in the refrigerator at 40° F. or less.
6. Accept biohazardous medical waste only if it is accompanied by the tracking ~~form~~ document. The operator shall sign the tracking ~~form~~ document and keep a copy of the acceptance documentation for ~~one year~~ the period required under the USDOT requirements, as listed in 49 CFR 172.201.
7. Accept biohazardous medical waste if it is packaged as described in R18-13-1407. If a biohazardous medical waste container is damaged or leaking, improperly labeled, or otherwise unacceptable, a transfer facility operator shall do one of the following:

- a. Reject the waste and return it to the transporter or self-hauling generator.
- b. No change
- 8. Clean the storage area daily, ~~as prescribed in R18-13-1407(A)(2).~~ “Clean” means to remove visible particles combined with one of the following:
 - a. Exposure to hot water at a temperature of at least 180 degrees Fahrenheit for a minimum of 15 seconds.
 - b. Exposure to an EPA-approved chemical disinfectant used under established protocols and regulations.
 - c. Any other method that the Department determines is acceptable, if the determination of acceptability is made in advance of the cleaning.

R18-13-1412. Treatment Facilities; Application Requirements; Design and Operation

- A. An operator who applies for facility plan approval shall comply with ~~all of the following:~~ subsections (1) and (2) as well as all of the requirements in subsection (B):
 - 1. No change
 - a. No change
 - b. No change
 - c. No change
 - d. No change
 - e. No change
 - 2. Submit to the Department and have readily available at the facility, an operations procedure manual describing how the waste will be handled from the time it is accepted by the treater through the treatment process and final disposition of the treated waste. The operations procedure manual shall include all of the following:
 - a. Provisions for treating biohazardous medical waste within ~~24~~ 72 hours of receipt or refrigerating ~~immediately~~ at 40° F. or less upon determination that treatment or disposal will not occur within ~~24~~ 72 hours. Nonputrescible biohazardous medical waste that is not immediately treated may be stored for up to 90 days unrefrigerated.
 - b. No change
 - c. No change
 - ~~3. Have on hand written procedures stating that biohazardous medical waste is to be accepted from a transporter only if the waste is accompanied by a tracking form, and written procedures that require compliance with both of the following:~~
 - a. ~~The treater or the treater’s authorized agent shall sign the tracking document and keep a copy of the acceptance documentation for one year.~~
 - b. ~~If a biohazardous medical waste container is damaged or leaking, improperly labeled, or otherwise unacceptable, a treater shall do one of the following:~~
 - i. ~~Reject the waste and return it to the transporter.~~
 - ii. ~~Accept the waste and transfer it directly from the transporting vehicle to the treatment processing unit.~~
 - iii. ~~If the waste will not be treated immediately, repackage the waste for storage.~~
 - 4. ~~Assure that the facility is designed to meet both of the following requirements:~~
 - a. ~~Any floor or wall surface in the processing area of the facility which may come into contact with biohazardous medical waste is constructed of a smooth, easily cleanable non-porous material that is impervious to liquids.~~
 - b. ~~The floor surface in the treatment and storage area either has a curb of sufficient height to contain spills or slopes to a drain that connects to an approved sanitary sewage system, septic tank system, or collection device.~~

- ~~5. Store biohazardous medical waste as required in R18-13-1408.~~
 - ~~6. Comply with all of the following if the treatment method is incineration:~~
 - ~~a. Reduce the incinerated medical waste, excluding metallic items, into carbonized or mineralized ash by incineration.~~
 - ~~b. Determine whether the ash is hazardous waste as required under R18-8-262.~~
 - ~~7. Conduct any autoclaving according to the manufacture's specifications for the unit.~~
 - ~~8. Use only alternative medical waste treatment methods that achieve the treatment standards in R18-13-1415(A).~~
 - ~~9. Treat animal waste, chemotherapy waste, and cultures and stocks as prescribed in R18-13-1420.~~
 - ~~10. Treat medical sharps as prescribed in R18-13-1419.~~
 - ~~11. Keep records of equipment maintenance and operational performance levels for three years. The records shall include the date and result of all equipment calibration and maintenance. Operational performance level records shall indicate the duration of time for each treatment cycle and:~~
 - ~~a. For steam treatment and microwaving treatment records, both the temperature and pressure maintained in the treatment unit during each cycle and the method used for confirmation of temperature and pressure.~~
 - ~~b. For chemical treatment, a description of the solution used.~~
 - ~~c. For incineration, the temperature maintained in the treatment unit during operation.~~
 - ~~d. Any other operating parameters in the manufacturer's specifications.~~
 - ~~e. A description of the treatment method used and a copy of the maintenance test results.~~
 - ~~12. Not open the red bag prior to treatment unless opening the bag is required to treat the contents. Transfer of the entire contents, when performed as part of the treatment process, is permitted.~~
- B.** ~~The treater shall make treatment records available for Departmental inspection upon request. An operator of a department approved facility shall comply with all of the following:~~
1. Have readily accessible written procedures stating that biohazardous medical waste is to be accepted from a transporter only if the waste is accompanied by a tracking document, and written procedures that require compliance with both of the following:
 - a. The treater or the treater's authorized agent shall sign the tracking document and keep a copy of the acceptance documentation for the period required under the USDOT requirements, as listed in 49 CFR 172.201.
 - b. If a biohazardous medical waste container is damaged or leaking, improperly labeled, or otherwise unacceptable, a treater shall do one of the following:
 - i. Reject the waste and return it to the transporter or self-hauling generator.
 - ii. Accept the waste and transfer it directly from the transporting vehicle to the treatment processing unit.
 - iii. If the waste will not be treated immediately, repackage the waste for storage.
 2. Assure that the facility is designed to meet both of the following requirements:
 - a. Any floor or wall surface in the processing area of the facility which may come into contact with biohazardous medical waste is constructed of a smooth, easily cleanable non-porous material that is impervious to liquids.
 - b. The floor surface in the treatment and storage area either has a curb of sufficient height to contain spills or slopes to a drain that connects to an approved sanitary sewage system, septic tank system, or collection device.
 3. Store biohazardous medical waste as required in R18-13-1408.
 4. Comply with all of the following if the treatment method is incineration:
 - a. Reduce the incinerated medical waste, excluding metallic items, into carbonized or mineralized ash by incineration.

- b. Determine whether the ash is hazardous waste as required under R18-8-262.
- 5. Conduct any autoclaving according to the manufacturer's specifications for the unit.
- 6. Use only alternative medical waste treatment methods that achieve the treatment standards in R18-13-1415(A).
- 7. Treat animal waste, chemotherapy waste, and cultures and stocks as prescribed in R18-13-1420.
- 8. Render medical sharps incapable of creating a stick hazard by using an encapsulation agent or any other process that prevents a stick hazard.
- 9. Keep records of equipment maintenance and operational performance levels for three years. The records shall include the date and result of all equipment calibration and maintenance. Operational performance level records shall indicate the duration of time for each treatment cycle and:
 - a. For steam treatment and microwaving treatment records, both the temperature and pressure maintained in the treatment unit during each cycle and the method used for confirmation of temperature and pressure.
 - b. For chemical treatment, a description of the solution used.
 - c. For incineration, the temperature is maintained in the treatment unit during operation.
 - d. Any other operating parameters in the manufacturer's specifications.
 - e. A description of the treatment method used and a copy of the maintenance test results.
- 10. Not open a sealed biohazardous medical waste container prior to treatment unless opening the container is required to treat the contents. Transfer of the entire contents, when performed as part of the treatment process, is permitted.
- 11. Clean the storage and treatment areas as necessary to protect the public health and employee health and safety.
- C. The treater shall make treatment records available for Departmental inspection upon request.

R18-13-1413. Changes to Approved Medical Waste Facility Plans

- A. As required by A.R.S. § 49-762.06, before making any change to an approved facility plan, a treatment facility owner or operator shall submit a notice to the Department stating ~~which of the following categories~~ type of change is requested, including but not limited to:
 - 1. No change
 - 2. No change
 - 3. No change
 - a. No change
 - b. No change
 - c. No change.
 - 4. No change
 - a. No change
 - b. No change
 - c. No change
 - d. No change
- B. No change
 - 1. No change
 - 2. No change
 - 3. No change
- C. An owner or operator of an existing municipal solid waste landfill who intends to accept untreated biohazardous medical waste shall submit a notice of a Type III change and an amended facility plan.

R18-13-1414. Alternative Medical Waste Treatment Methods: Registration and Equipment Specifications

- A. No change
 - 1. No change
 - 2. No change
 - 3. No change
 - 4. No change
 - 5. No change
 - 6. No change
 - 7. No change
 - 8. No change
 - a. No change
 - b. No change
 - c. No change
 - d. No change
 - 9. No change.
- B. No change
- C. If documentation of Departmental registration is not on file with a generator utilizing alternative medical waste treatment technology, the Department shall classify biohazardous medical waste treated using the unregistered alternative treatment technology as untreated biohazardous medical waste.

R18-13-1415. Treatment Standards, Quantification of Microbial Inactivation and Efficacy Testing Protocols

- A. No change
 - 1. No change
 - 2. A 4 log₁₀ inactivation in the concentration of ~~Bacillus~~ ~~stearothermophilus~~ Bacillus stearothermophilus or ~~Bacillus subtilis~~ Bacillus subtilis as is appropriate to the technology.
- B. No change
 - 1. No change
 - a. No change
 - b. No change
 - 2. No change
 - a. No change
 - b. No change
- C. No change
 - 1. No change
 - 2. No change
 - 3. No change
 - a. No change
 - i. No change
 - ii. No change
 - iii. No change
 - iv. No change
 - v. No change
 - b. No change
 - i. No change
 - ii. No change

- iii. No change
- iv. No change
- v. No change

D. No change

R18-13-1417. Disposal Facilities: Design and Operation

An operator of a municipal solid waste landfill that accepts untreated biohazardous medical waste shall comply with all of the following in design and operational requirements:

- 1. No change
- 2. No change
- 3. No change
- 4. No change
- 5. No change
- 6. No change

R18-13-1418. Discarded Drugs

A. ~~A generator of discarded~~ Discarded drugs that are not hazardous waste, not returned to the manufacturer, and not segregated and labeled on site for transport to a treatment facility shall destroy the drugs on site be destroyed on site by the generator of such drugs by any method that prevents the drugs' use prior to placing the waste out for collection. ~~A generator shall destroy the discarded drugs by any method that prevents the drug's use.~~ If federal or state law prescribes a specific method for destruction of discarded drugs, the generator shall comply with that law.

B. ~~A generator of discarded drugs may flush them down a sanitary sewer if allowed by the wastewater treatment authority.~~

R18-13-1419. Medical Sharps

A. Medical sharps shall be handled as follows:

- 1. A generator who treats biohazardous medical waste on site shall place medical sharps in a sharps container after rendering them incapable of creating a stick hazard by using an encapsulation agent or any other process that prevents a stick hazard. Medical sharps encapsulated or processed in this manner are considered to be solid waste.
- 2. A generator who ships biohazardous medical waste off site for treatment shall either:
 - a. Place medical sharps in a medical sharps container and follow the requirements of R18-13-1406, or
 - b. Package and send medical sharps to a treatment facility via a mail-back system as prescribed by the instructions provided by the mail-back system operator. ~~An Arizona treatment facility shall render medical sharps incapable of creating a stick hazard by using an encapsulation agent or any other process that prevents a stick hazard.~~ The generator shall retain proof of shipping.
- 3. ~~A person operating a treatment facility who accepts medical sharps for treatment shall either:~~
 - a. ~~Encapsulate medical sharps to prevent stick hazard, or~~
 - b. ~~Use any other process that prevents a stick hazard.~~

B. Notwithstanding subsections (A)(1) and (A)(2), the following syringes do not have to be placed in a medical sharps container:

- 1. Syringes that have never had a needle (sharp) attached.
- 2. Syringes where a needle or sharp had been attached and has been separated from the syringe so that no stick or puncture hazard remains with the syringe.

C. Syringes that are exempted by subsection (B) from being placed in a medical sharps container are not biohazardous medical waste, and may be treated as a solid waste, if they are not composed of

biohazardous items listed in R18-13-1401(4) and do not contain discarded drugs or another regulated substance.

R18-13-1420. Additional Handling Requirements for Certain Wastes

- A.** A person who treats the following biohazardous medical waste categories shall meet the following additional requirements:
1. Cultures and stocks shall be incinerated, autoclaved, or treated by an alternative medical waste treatment method that meets the treatment standards set forth in R18-13-1415(A). ~~and~~ If cultures and stocks are shipped off site for treatment or disposal, they shall be packaged inside a watertight primary container with absorbent packing materials if shipped off site for treatment or disposal. The primary container shall be placed inside a watertight secondary inner container that is then placed inside an outer container with sufficient cushioning material to prevent shifting between the secondary inner container and the outer container. If federal or state law prescribes specific requirements for packaging and transporting this waste, the treater shall comply with that law.
 2. ~~Chemotherapy~~ Trace chemotherapy waste shall be incinerated or disposed of in either an approved solid waste or hazardous waste disposal facility.
 3. No change
 - a. No change
 - b. No change
 - i. No change
 - ii. No change
- B.** No change

ECONOMIC IMPACT STATEMENT
TITLE 18. ENVIRONMENTAL QUALITY
CHAPTER 13. DEPARTMENT OF ENVIRONMENTAL QUALITY
SOLID WASTE MANAGEMENT

1. Identification of the rulemaking: 18 A.A.C. 13, Article 14. Identification of the rulemaking: 18 A.A.C. 13, Article 14

Economic Impact Statement (EIS) rule information, by rule topic:

Transport

- **Conduct & Frequency.** The previous rule burden required transporters to deposit BMW at a licensed facility within 24 hours if it was unrefrigerated and did not allow carriage of multiple waste streams on the same vehicle. Nonputrescible waste was subject to the same 24-hour rule, even though it can be stored at room temperature safely for much longer.
- **Estimated Change.** One change included allowing 48 hours of additional unrefrigerated storage time and carrying multiple U.S. Department of Transportation (DOT)-compatible wastes on the same vehicle. These changes allow transporters to carry larger amounts of waste unrefrigerated to maximize collection space, minimize inefficiency, improve customer relationships by collecting waste at one convenient time, and consolidate multiple trips.
- **Cost Savings.** From the self-reported transporter data gathered by 2/24/21, the cost savings estimate ranged from \$0 to \$5,000, with a mean savings of \$1,872.31 per month for each licensed transporter.

DOT Integration

- **Conduct & Frequency.** The previous burden required transporters to comply with overlapping regulations for BMW from both USDOT and ADEQ. For instance, USDOT requires a longer records-retention period than ADEQ (2 to 3 years versus 1 year). Therefore, transports expended administrative time keeping track of compliance with both timeframes.

- **Estimated Change.** The changes mirrored USDOT requirements in the ADEQ rules, thus eliminating the additional administrative time and confusion required to comply with two different requirements. From the self-reported transporter data gathered by 2/24/21, the time savings estimates ranged from 0 to 24 hours per month, with a mean low savings of 1.23 hours per month and a mean high savings of 6.46 hours per month.
- **Cost Savings.** The time savings amounted to administrative personnel cost savings. From the self-reported transporter data gathered by 2/24/21, 31% anticipated some cost savings, 15% were unsure of cost savings, and 54% did not see any cost savings in the record retention requirement. When responses were broken down by business size (1 to 3 versus 4 to 10 transport vehicles), 36.3% of the smallest transporters (1 to 3 vehicles) anticipated a cost savings, 45.5% of the smallest transporters anticipated no savings, and 18.2% of the smallest transporters were unsure of potential savings. The larger transporters (4 to 10 vehicles) reported no anticipated savings.

Registration

- **Conduct & Frequency.** Previously, transporters were only subject to management and hygiene standards for a vehicle that was used to transport BMW for more than 30 consecutive days. However, some businesses exploited that loophole by rotating vehicles every 29 days and avoiding regulation that was intended to apply to BMW transporters in order to protect human health and the environment. That provision also created frustration and confusion regarding compliance.
- **Estimated Change.** The requirement now requires a license for vehicles that transport BMW “at least once weekly for a month.” This revision captured those in the business of transporting BMW regularly while excluding those not intended for inclusion. This modification eliminated confusion and frustration, allowed for even and fair application of the requirements, and avoided counting the number of consecutive days, which can be an administrative burden. From the self-reported transporter data gathered by 2/24/21, 84.6% of transporters spent time tracking the operation days of vehicles, with 38.5% spending between 1 and 3 hours per

month and 46.2% spending between 4 and 24 hours per month. Estimates of time expended to comply with the management and hygiene standard ranged from 15 to 30 minutes per vehicle (average of 22.5 minutes), at a rate of one to two times per week (average of 1.5 used); this weekly cleaning amount averaged 33.75 minutes per week per vehicle. For transporters with 1-3 vehicles, this amounted to 33.75 to 101.25 minutes, on average, of total cleaning time weekly. For transporters with 4 to 10 vehicles, this amounted to 135 to 337.5 minutes, on average, of total cleaning time weekly. Depending upon size, transporters spent from 60 to 1,440 minutes per month tracking (a general average of 750 minutes) versus 135 to 1,350 minutes cleaning (a general average of 742.5 minutes), yielding a break-even or small time savings.

- Cost Savings. The modification in the rules ameliorated frustration and time needed to count the exact number of days a vehicle transported BMW and saved expenses involved in such tracking. From the self-reported transporter data gathered by 2/24/21, the tracking savings estimates ranged from \$0 to \$5,000, with a mean savings of \$875.38 per month. From survey data, the chemical used to clean was typically diluted bleach or a similarly priced product. A typical 121-ounce jug of bleach ranges in price from \$2.97 to \$21.99 (\$12.48 as a general average of these 2), depending on formulation, brand, and retailer, with the strongest concentration the CDC recommends (for bleach to water ratio) being 8 ounces of bleach to 1 gallon of water; this allows for 15.125 cleanings per 121-ounce jug of bleach, which is a material cost of around \$0.83 per cleaning. Given the above data regarding time, the employee time expended was anticipated to be the same or slightly less. Given the price per cleaning and employee time factors, tracking costs likely break even with cleaning costs. However, some stakeholders who retained insurance apprised ADEQ that their insurer required cleaning after each pick up and required picture submissions and logging; typically, this resulted in trucks being cleaned one or twice per week. One stakeholder said they were “happy to clean the truck” because they got paid for it, through an insurance program called “Xactimate.” The amount of cost savings was not disclosed to

ADEQ by the stakeholder, but is an additional factor in cost savings for the cleaning requirement.

Sewering

- **Conduct & Frequency.** Due to the Hazardous Waste (HW) Pharmaceutical rule changes (effective November 3, 2020) that prohibit disposing of such substances in sewers (sewering), non-HW pharmaceuticals were subject to different requirements than HW pharmaceuticals, which caused increased compliance costs incurred through training and sorting.
- **Estimated Change.** The removal of the provisions that allowed for non-HW pharmaceutical sewerage matched EPA recommendations for non-HW pharmaceuticals and stakeholder requests for such removal. The removal also streamlined disposal and eliminated sorting and training time needed for the different types of pharmaceuticals.
- **Cost Savings.** The modification in the rules equated to fewer hours spent sorting and training at the generator level. Although there was not a precise measure localized to Arizona generators for non-hazardous waste pharmaceuticals available, training for the hazardous waste pharmaceuticals sewerage ban had already been conducted as necessitated by the incorporation of the sewerage ban into the hazardous waste rules. Therefore, no additional training is likely to be necessary and any time previously spent differentiating the types of pharmaceuticals for sewerage purposes can be used more productively.

Mail-back Records Retention

- **Conduct & Frequency.** The previous rules did not provide clear records retention requirements for mail-back sharps and created confusion and concern about compliance.
- **Estimated Change.** The change clarified that the requirement is to retain documentation that is already required under United States Postal Service mailing guidelines. There is no increase in burden other than filing.

- Cost Savings. This change minimizes discussions about basic compliance requirements during inspections and maximizes efficiency. There are no cost savings, nor any added cost.

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

Parties Affected:

- Arizona Department of Environmental Quality (ADEQ)
- County agencies acting as regulatory authorities
- Exempt businesses
- Licensed BMW Transporters
- BMW Generators
- Small businesses regulated
- Community members living near transporter’s places of business (residential areas)

3. Cost/Benefit Analysis:

a. Part I- Cost/Benefit Stakeholder Matrix

Description of Affected Groups	Description of Effect	Increased Cost/Decreased Revenue	Decreased Cost/Increased Revenue
A. State and Local Government Agencies			
ADEQ	Clarity of the new rule	None	None
County agencies acting as regulatory authorities	Clarity of the new rule	None	None
B. Privately Owned Businesses			
Exempt businesses	Clarity of the new rule	None	None

Licensed BMW transporters	Clarity of the new rule	Minimal to Moderate	Minimal to Moderate
BMW Generators	Clarity of the new rule	Minimal	Minimal
Small businesses regulated	Clarity of the new rule	Minimal	Minimal to Moderate
C. Community			
Individual community members	Clarity of the new rule, protection of human health	None	None

Minimal	Moderate	Substantial	Significant
\$1,000 or less	\$1,000 to \$10,000	\$10,001 or more	Cost/Burden cannot be calculated, but ADEQ expects it to be significant.

b. Part II- Individual Stakeholder Summaries/Calculations

ADEQ

1. Staffing levels will not change. No new employees need to be hired or laid off. Current staff will update their inspection procedures to meet the new rules. Minimal time is needed for these small updates.

2. Cash flow will not change as a result of the rules. There will be no delay in receipts or increase in expenses. There are no fee increases or decreases impacting ADEQ.
3. Barriers to industry entry will not be affected; this is an existing regulatory program so there are no startup costs for ADEQ. Business start-up costs already in existence for the regulated community will remain the same, and no additional burden is created on ADEQ for processing. ■

County agencies acting as regulatory authorities

1. Staffing levels will not change. No new employees need to be hired or laid off. Current staff will update their inspection procedures to meet the new rules. Minimal time is needed for these small updates.
2. Cash flow will not change as a result of the rules. There will be no delay in receipts or increase in expenses. There are no fee increases or decreases impacting the agency either way.
3. Barriers to industry entry will not be affected; this is an existing regulatory program so there are no startup costs for county agencies. Business start-up costs already in existence for the regulated community will remain the same, thus no additional burden is created on county agencies for processing. ■

Exempt businesses

1. Staffing levels of both small and large businesses exempt from the provisions in these rules will not change, as they are not affected. In this rulemaking, there are no additional obligations or costs for those who are exempt, nor should there be any staffing changes as a result of these rules.
2. Cash flow for exempt businesses will not be impacted, as there are no changes to these rules for exempt businesses. There would be

no expected delay in receipts or increased expenses as a result of this rulemaking for businesses exempt from these rules.

3. Barriers to industry entry would not be increased for businesses exempt from these rules, as there is no change that affects those businesses under these rules. Start-up costs for exempt businesses would not change based on this rulemaking.

Licensed BMW Transporters

1. Staffing levels could vary slightly for larger businesses but are not expected to change for small businesses. The only potential increase in staffing could come from cleaning requirements. This increase would not have an impact on those small businesses with fewer vehicles as the time required to clean appears not to require additional staff. Larger transporters who do not now comply but begin complying will need to budget some additional time, although it is unlikely there will be a need to hire people for this task. It is unlikely anyone will need to be laid off.
2. Cash flow change could occur if a transporter adds a vehicle via License Modification due to the update in R18-13-1409(J). A vehicle is required to be included on a license if used at least once each week for a month under the amended rule as opposed to the previous requirement for licensing occurring after 30 consecutive days of use. Small transporters in particular commented that they wished to see such a modification in order to level the playing field competitively. Those with additional vehicles used for transport will need to comply with proper licensing and cleaning protocols, which will allow smaller transporters with properly licensed vehicles and cleaning procedures to compete. The additional cost that could be incurred for these vehicles will vary according to R18-13-1409(D), with a license modification application fee of

\$100 and fees up to \$5,000 based upon a formula in the rule that considers the number of vehicles and the actual hours spent by ADEQ. There should be no delay in receipts, however.

3. Barriers to industry entry should not change with these rule updates, and no additional business start-up costs will be imposed. No new fees are being added, and current fees are not being increased.

BMW Generators

1. Staffing levels will likely not be impacted for generators of various sizes under these rules. It is unlikely there would be a need for either additional employees or a reduction in employees, as responsibilities are largely remaining the same.
2. Cash flow is unlikely to be altered for generators of all sizes under these rules. Nothing in these rules should delay receipts or increase expenses. The practices in place for these generators will remain largely the same.
3. Barriers to industry entry will not increase. The requirements are largely the same under this rulemaking as under the previous rules for generators, so no increase in start-up costs is anticipated due to these rules.

Small businesses regulated

1. Staffing levels for small businesses regulated under these rules will be largely the same both before and after the updated rules go into effect. As examined in the previous industry-specific sections, it is unlikely small businesses will need to hire or lay off staff due to this rulemaking.
2. Cash flow for small businesses regulated under these rules should not delay receipts or increase expenses. Although some

requirements, such as cleaning, will take a small amount of additional staff time, other requirements, such as increase in storage times, should result in less staff time expended. The net effect would be no change.

3. Barriers to industry entry are unlikely to increase under these rules. Regardless of business size, no additional start-up costs are imposed on businesses in this rulemaking.
4. Probable Impact on Employment: There is likely no impact on employment, as noted in the above sections with industry-specific discussions. There is the potential for increased hours or hiring should a stakeholder decide to expand their business to address additional COVID-19 waste. There will be no change to state employment as a result of this rule.
5. Probable Impact on Small Businesses: A.R.S. § 41-1035 requires agencies to consider reducing the rule's impact on small businesses. ADEQ has considered the feasibility of A.R.S. § 41-1035 methods (1)-(5) along with ADEQ's statutory mandate and has weighed the benefits of each against the need to protect human health and the environment. ADEQ is already allowing the regulated community to use the least stringent requirements necessary to maintain the appropriate levels of human safety and environmental protection. Due to the statutory mandate, the nature of these regulations, and the potential impact to the community if businesses generating or transporting BMW are not regulated, it is not possible to exempt small businesses from these requirements. However, ADEQ has employed less stringent standards when doing so would not compromise human health and safety, such as increasing putrescible waste non-refrigeration time frames up to 72 hours. This extension allows small businesses more time to gather waste and deposit the waste at an appropriate facility, thus reducing trips and associated costs. ADEQ has also simplified record-keeping requirements to align with federal requirements so there is a unified retention schedule and documentation required. These simplified requirements should reduce training time and administrative burden.
 - a. Identification of Small Businesses subject to the rules: Directly affected small businesses include transporters and generators of BMW, like dentists, doctors,

and veterinarians. Sharps provisions apply to tattoo shops. Individuals in their own homes will not be affected by these regulations.

- b. Compliance Costs: Additional administrative costs required for compliance with the rules are not necessary, as no provision is anticipated to increase personnel hours or outside expenses. Additional compliance costs are likely to be minor, such as the time to clean vehicles, mentioned above; since many are already providing this cleaning to comply with insurance policies, little change is anticipated, if any. Since rule provisions have been redrafted for clarity, these rules should be easier to follow than in their previous form, particularly when it comes to the licensing requirements, which have not changed. It is not anticipated that counsel will be required, although all parties are encouraged to consult with an attorney if they wish.
- c. Methods to Reduce Impact: In the beginning of the “Probable Impact on Small Businesses” section, ADEQ elaborates on its work to reduce the impact on small businesses. The rules have the least burden on business while accomplishing the regulatory objective provided in statute. ADEQ’s robust stakeholder process has allowed for unique insights into the challenges and opinions of our business community. These insights have demonstrated opportunities where ADEQ could lessen regulations while remaining appropriately protective of human health and environment. This effort also highlighted areas where the small business owners felt strongly that regulations were necessary. ADEQ thanks its stakeholders for their collaboration and honesty.
- d. Cost/Benefit Analysis to Private Persons: ADEQ is conscious of the variation in business sizes and interests involved in this rulemaking and has worked to build consensus among stakeholders such that the rules provide a balanced benefit to all. ADEQ believes the rules may increase costs minimally, while decreasing costs elsewhere. The regulations are appropriately protective of human health and the environment while allowing for discretion. This will advance the goal of keeping Arizona an enjoyable place to live and work. Please see the above sections for additional details on costs. Various business sizes are analyzed above,

as well as farther up in the EIS where impacts from specific changes are discussed.

6. Effect on Revenues to State Agencies. There will be no additional or reduced costs to ADEQ or other state agencies, nor will there be any change in state tax revenues, resulting from changes to these rules. No fee changes and no increase in business costs or decrease in business revenues are expected; therefore, no reduction in business activity that could lower state tax revenues should result from these rule changes. However, should the volume of transporters increase proportionate to COVID-19 waste volumes, the state would expect increased tax revenues due to increased business activity. In that scenario, businesses would also be increasing revenues and, incrementally, costs as they expand. However, these changes are not due to rule changes, but supply and demand in the market.
7. Less Intrusive/Costly Alternatives: ADEQ has examined as many potentially less intrusive or less costly alternatives as possible, but concludes most of these measures are untenable due to unique Arizona factors. For example, increasing unrefrigerated storage time frames for putrescible waste beyond 72 hours is not recommended in Arizona despite being utilized in other states, primarily because recommendations for safety indicate that the Arizona heat, especially in the summer months, could speed up decomposition of the putrescible waste more rapidly, thus creating potential disease vectors or nuisance odors. Additionally, the fee structure has been examined for available reduction; however, the current fees are as low as possible to account for program operational costs. The fees have been in place since 2012 without increase, despite increasing staff wages. These fees were also developed with extensive stakeholder feedback. So, while ADEQ is not able to lower fees, ADEQ also will not increase fees. Thus, the burden on stakeholders will not increase. ADEQ has allowed maximum flexibility for storage times for non-putrescible waste (90 days), in order to allow transporters and generators to make the determinations for wastes that take refrigeration space versus those that may be safely stored elsewhere. ADEQ is balancing the least intrusive and most cost-effective approach with the need to protect the public and environment from potential disease vectors.

8. Data Basis: Searches on Lexis were conducted to compare various states' medical waste rules for comparison, including storage timeframes. State regulations from that database were used for comparison and modeling. All relevant information was summarized for stakeholders and opened for discussion prior to rule drafting, so all rules incorporate the stakeholder-preferred provisions and language. Data for impact on stakeholders was gathered via a simple anonymous online survey of transporters, wherein the link was available prior to and during the final stakeholder meeting. Participants were assured their data would be anonymous. Additional data was collected from transporters as to cleaning costs through program staff outreach to better understand current industry practices. This data comes directly from stakeholder responses targeted to specific areas and captures a small amount of their daily practices in an anonymous way so that trade secrets are not publicly shared. ADEQ thanks our stakeholders for their participation, feedback, and involvement in this rulemaking.



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 13. Department of Environmental Quality - Solid Waste Management

Sections, Parts, Exhibits, Tables or Appendices modified
R18-13-2501

REMOVE Supp. 16-3
Pages: 1 - 41

REPLACE with Supp. 17-4
Pages: 1 - 41

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
Arizona Department of State
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
December 31, 2017

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. 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.

EXEMPTIONS FROM THE APA

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

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

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

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

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

EXEMPTIONS AND PAPER COLOR

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

PERSONAL USE/COMMERCIAL USE

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

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 13. DEPARTMENT OF ENVIRONMENTAL QUALITY - SOLID WASTE MANAGEMENT

Editor's Note: The Office of the Secretary of State publishes all Chapters on white paper (Supp. 01-2).

Editor's Note: This Chapter contains rules which were adopted under an exemption from the provisions of the Administrative Procedure Act (A.R.S. Title 41, Chapter 6) pursuant to A.R.S. § 49-701.01(C)(1) and (2). Exemption from A.R.S. Title 41, Chapter 6 means that the Department did not submit these rules to the Governor's Regulatory Review Council for review; the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; and the Department was not required to hold public hearings on these rules.

ARTICLE 1. RESERVED

ARTICLE 2. SOLID WASTE DEFINITIONS; EXEMPTIONS

Article 2, consisting of Section R18-13-201, adopted effective July 27, 1998, under an exemption from the provisions of A.R.S. Title 41, Chapter 6 (Supp. 98-3).

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R18-13-201. Land Application of Biosolids Exemption 4
R18-13-202. Coal Slurry Discharges from Pipeline Leaks Exemption 4

ARTICLE 3. REFUSE AND OTHER OBJECTIONABLE WASTES

Title 18, Chapter 13, Article 3, consisting of Sections R18-13-301 through R18-13-312, recodified from Title 18, Chapter 8, Article 5, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

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Article 5, consisting of Section R18-13-501, made by final rulemaking at 18 A.A.R. 1217, effective July 1, 2012 (Supp. 12-2).

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Editor's Note: The recodification at 7 A.A.R. 2522 described below erroneously moved Sections into 18 A.A.C. 9, Article 9. Those Sections were actually recodified to 18 A.A.C. 9, Article 10. See the Historical Notes for more information (Supp. 01-4).

Article 15, consisting of Sections R18-13-1501 through R18-13-1514 and Appendix A, recodified to 18 A.A.C. 9, Article 9 at 7 A.A.R. 2522, effective May 24, 2001 (Supp. 01-2).

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Article 21, consisting of Sections R18-13-2101 through R18-

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13-2103, made by final rulemaking at 9 A.A.R. 1770, effective July 14, 2003 (Supp. 03-2).

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Article 25, consisting of Section R18-13-2501, expired at 23 A.A.R. 3429, effective October 10, 2017 (Supp. 17-4).

Article 25, consisting of Section R18-13-2501, adopted by final rulemaking at 5 A.A.R. 4654, effective November 15, 1999 (Supp. 99-4).

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ARTICLE 26. EXPIRED

Article 26, consisting of Sections R18-13-2601 through R18-13-2604, expired at 16 A.A.R. 705, effective April 6, 2010 (Supp. 10-2).

Article 26, consisting of Sections R18-13-2601 through R18-13-2604, made by exempt rulemaking at 14 A.A.R. 4258, effective October 20, 2008 (Supp. 08-4).

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ARTICLE 27. EXPIRED

Article 27 consisting of Sections R18-13-2701 through R18-13-2703, expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2984, effective September 15, 2016 (Supp. 16-3).

Article 27 consisting of Sections R18-13-2701 through R18-13-2703, made by exempt rulemaking at 16 A.A.R. 848, effective July 1, 2010 (Supp. 10-2).

Section

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ARTICLE 1. RESERVED

Editor's Note: Article 2, consisting of Section R18-13-201, was adopted under an exemption from the provisions of A.R.S. Title 41, Chapter 6, pursuant to A.R.S. § 49-701.01(C)(1) and (2). Exemption from A.R.S. Title 41, Chapter 6 means the Department did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; the Department did not submit the rules to the Governor's Regulatory Review Council for review; and the Department was not required to hold public hearings on this Section (Supp. 98-3).

ARTICLE 2. SOLID WASTE DEFINITIONS; EXEMPTIONS

Editor's Note: The following Section was adopted under an exemption from the provisions of the Administrative Procedure Act which means that these rules were not reviewed by the Governor's Regulatory Review Council; the agency did not submit notice of proposed rulemaking to the Secretary of State for publication in the Arizona Administrative Register; and the agency was not required to hold public hearings on these rules (Supp. 98-3).

R18-13-201. Land Application of Biosolids Exemption

- A. This Section applies only to biosolids as defined in R18-13-1501(7). The land application of biosolids, when placed on or applied to the land in full conformity with 18 A.A.C. 13, Article 15 and A.R.S. § 49-761(F), and if the site of land application has ceased to receive application of biosolids and all applicable site restrictions set by 18 A.A.C. have been satisfied, is exempt statewide from the definition of solid waste found at A.R.S. § 49-701.01(A). This exemption applies only when the biosolids and the soil to which it has been applied remain at the site of the application.
- B. This exemption does not alter or set any new standard for the soil remediation standards found at 18 A.A.C. 7, Article 2.

Historical Note

Adopted under and exemption from A.R.S. Title 41, Chapter 6, pursuant to A.R.S. § 49-701.01(C)(1) and (2), effective July 27, 1998 (Supp. 98-3). Amended by exempt rulemaking at 5 A.A.R. 4004, effective September 17, 1999 (Supp. 99-3).

R18-13-202. Coal Slurry Discharges from Pipeline Leaks Exemption

This Section applies only to coal slurry discharges onto the ground from pipeline leaks. Coal slurry discharges onto the ground from pipeline leaks are exempt statewide from the definition of solid waste prescribed in A.R.S. § 49-701.01(A) if both of the following conditions are met:

1. The discharge was the result of an accidental pipeline leak.
2. The thickness of the layer of coal slurry on the ground that resulted from the discharge is 3 inches or less.

Historical Note

New Section adopted by exempt rulemaking at 5 A.A.R. 4004, effective September 17, 1999 (Supp. 99-3).

ARTICLE 3. REFUSE AND OTHER OBJECTIONABLE WASTES**R18-13-301. Reserved****R18-13-302. Definitions**

- A. "Approved" means acceptable to the Department.
- B. "Ashes" means residue from the burning of any combustible material.
- C. "Department" means the Department of Environmental Quality or a local health department designated by the Department of Environmental Quality.

- D. "Garbage" means all animal and vegetable wastes resulting from the processing, handling, preparation, cooking, and serving of food or food materials.
- E. "Manure" means animal excreta, including cleanings from barns, stables, corrals, pens, or conveyances used for stabling, transporting, or penning of animals or fowls.
- F. "Person" means the state, a municipality, district or other political subdivision, a cooperative, institution, corporation, company, firm, partnership or individual.
- G. "Refuse" means all putrescible and nonputrescible solid and semisolid wastes, except human excreta, but including garbage, rubbish, ashes, manure, street cleanings, dead animals, abandoned automobiles, and industrial wastes.
- H. "Rubbish" means nonputrescible solid wastes, excluding ashes, consisting of both combustible and noncombustible wastes, such as paper, cardboard, waste metal, tin cans, yard clippings, wood, glass, bedding, crockery and similar materials.

Historical Note

Section recodified from A.A.C. R18-8-502, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

R18-13-303. Responsibility

- A. The owner, agent, or the occupant of any premises, business establishment, or industry shall be responsible for the sanitary condition of said premises, business establishment, or industry. No person shall place, deposit, or allow to be placed or deposited on his premises or on any public street, road, or alley any refuse or other objectionable waste, except in a manner described in these rules.
- B. The owner, agent, or the occupant of any premises, business establishment, or industry shall be responsible for the storage and disposal of all refuse accumulated, by a method or methods described in these rules.
- C. The collection and disposal of all refuse not acceptable for collection by a collection agency is the responsibility of each occupant, business establishment, or industry where such refuse accumulates, and all such refuse shall be stored, collected, and disposed of in a manner approved by the Department.
- D. All dangerous materials and substances shall, where necessary, be rendered harmless prior to collection and disposal.

Historical Note

Section recodified from A.A.C. R18-8-503, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

R18-13-304. Inspection

Representatives of the Department shall make such inspections of any premises, container, process, equipment, or vehicle used for collection, storage, transportation, disposal, or reclamation or refuse as are necessary to ensure compliance with these rules.

Historical Note

Section recodified from A.A.C. R18-8-504, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

R18-13-305. Collection Required

- A. Where refuse collection service is available, the following refuse shall be required to be collected: Garbage, ashes, rubbish, and small dead animals which do not exceed 75 pounds in weight.
- B. The following refuse is not considered acceptable for collection but may be collected at the discretion of the collection

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agency where special facilities or equipment required for the collection and disposal of such wastes are provided:

1. Dangerous materials or substances, such as poisons, acids, caustics, infected materials, radioactive materials, and explosives.
2. Materials resulting from the repair, excavation, or construction of buildings and structures.
3. Solid wastes resulting from industrial processes.
4. Animals exceeding 75 pounds in weight, condemned animals, animals from a slaughterhouse, or other animals normally considered industrial waste.
5. Manure.

Historical Note

Section recodified from A.A.C. R18-8-505, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

R18-13-306. Notices

- A. All collection agencies shall provide each householder, or business establishment served, with a copy of the requirements governing the storage and collection of refuse which shall cover at least the following items:
 1. Definitions.
 2. Places to be served.
 3. Places not to be served.
 4. Scheduled day or days of collection.
 5. Materials acceptable for collection.
 6. Materials not acceptable for collection.
 7. Preparation of refuse for collection.
 8. Types and size of containers permitted.
 9. Points from which collections will be made.
 10. Necessary safeguards for collectors.
- B. All such notices governing storage and collection shall conform to these rules.

Historical Note

Section recodified from A.A.C. R18-8-506, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

R18-13-307. Storage

- A. All refuse shall be stored in accordance with the requirements of this Section. The owner, agent, or occupant of every dwelling, business establishment, or other premises where refuse accumulates shall provide a sufficient number of suitable and approved containers for receiving and storing of refuse, and shall keep all refuse therein, except as otherwise provided by this Chapter.
- B. Garbage shall be stored in durable, rust resistant, nonabsorbent, watertight, and easily cleanable containers, with close fitting covers and having adequate handles or bails to facilitate handling. The size of the container shall be determined by the collection agency.
- C. Rubbish and ashes shall be stored in durable containers. Bulky rubbish such as tree trimmings, newspapers, weeds, and large cardboard boxes shall be handled as directed by the collection agency. Where garbage separation is not required, containers for the storage of mixed rubbish and garbage shall meet the requirements specified in subsection (B) above.
- D. Containers for the storage of refuse shall be maintained in such a manner as to prevent the creation of a nuisance or a menace to public health. Containers that are broken or otherwise fail to meet the requirements of the rules shall be replaced, by the owner of said containers, with approved containers.
- E. Manure and droppings shall be removed from pens, stables, yards, cages, conveyances, and other enclosures as often as necessary to prevent a health hazard or the creation of a nuisance.

sance. All material removed shall be handled and stored in a manner that will maintain the premises nuisance free.

Historical Note

Section recodified from A.A.C. R18-8-507, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

R18-13-308. Frequency of Collection

- A. The frequency of collection shall be in accordance with rules of the collection agency but not less than that shown in the following schedules:
 1. Garbage only -- twice weekly.
 2. Refuse with garbage -- twice weekly.
 3. Rubbish and ashes -- as often as necessary to prevent nuisances and fly breeding.
- B. A variance from the required frequency rate may be granted to allow for the collection of garbage once weekly. The variance may be granted by the Department of Environmental Quality upon submission of an acceptable plan approved by the local health department demonstrating that no public health hazards or nuisances will exist and that fly breeding will be controlled by either biological, chemical, or mechanical means. The variance may be revoked whenever the Department of Environmental Quality determines that the circumstances warranting the variance no longer exist.

Historical Note

Section recodified from A.A.C. R18-8-508, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

R18-13-309. Place of Collection

- A. All refuse shall be properly placed on the premises for convenient collection as designated by the collection agency.
- B. Where alleys are provided, collection shall be made on the alley side of the premises.

Historical Note

Section recodified from A.A.C. R18-8-509, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

R18-13-310. Vehicles

- A. Vehicles used for collection and transportation of garbage, or refuse containing garbage, shall have covered, watertight, metal bodies of easily cleanable construction, shall be cleaned frequently to prevent a nuisance or insect breeding, and shall be maintained in good repair.
- B. Vehicles used for collection and transportation of refuse shall be loaded and moved in such a manner that the contents, including ashes, will not fall, leak, or spill therefrom. Where spillage does occur, it shall be picked up immediately by the collector and returned to the vehicle or container.
- C. Vehicles used for collection and transportation of rubbish or manure shall be of such construction as to prevent leakage or spillage, and shall provide a cover to prevent blowing of materials or creating a nuisance.

Historical Note

Section recodified from A.A.C. R18-8-510, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

R18-13-311. Disposal; General

- A. All refuse shall be disposed of by a method or methods included in these rules and shall include rodent, insect, and nuisance control at the place or places of disposal. Approval must be obtained from the Department for all new disposal sites and may change in the method of disposal prior to use.

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- B. Carcasses of large dead animals shall be buried or cremated, unless satisfactory arrangements have been made for disposal by rendering or other approved methods.
- C. All public "dumping grounds", provided in compliance with A.R.S. § 9-441, shall be maintained and operated in accordance with the requirements of these rules.
- D. Manure shall be disposed of by sanitary landfill, composting, incineration, or used as fertilizer in such a manner as not to create insect breeding or a nuisance.

Historical Note

Section recodified from A.A.C. R18-8-511, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

R18-13-312. Methods of Disposal

Approval must be obtained from the Department for any method or methods used for the disposal of refuse prior to the start of operations, and shall be accomplished by one or more of the methods listed below:

1. Sanitary landfill -- Consists of the disposal of refuse on land and the daily compaction and covering of the refuse with 6 to 12 inches of earth so as to prevent a health hazard or nuisance. The final compacted earth cover shall be a minimum of 2 feet in depth. Where sanitary landfill operations are proposed, the Department will require the following:
 - a. The landfill shall be located so that seepage will not create a health hazard, nuisance, or cause pollution of any watercourse or water bearing strata.
 - b. Adequate and proper surface drainage shall be provided to prevent ponding or erosion by rainwater of the finished fill.
 - c. Provision shall be made for the control of insects, rodents, wind blown refuse, and accidental fire.
 - d. Burning of refuse is prohibited.
 - e. An all weather access road is required.
 - f. Suitable equipment and operating personnel shall be provided.
 - g. Salvaging, if permitted, shall be rigidly controlled.
 - h. A variance from the daily compaction and covering requirement may be granted for sites serving less than 2,000 people by the Department of Environmental Quality upon submission of an acceptable plan approved by the local health department demonstrating that no public health hazards or nuisances will exist. The variance will allow for compaction and cover every two weeks at sites serving less than 500 people; weekly compaction and cover for sites serving from 500 to 1,000 people; and twice weekly compaction and cover for sites serving from 1,000 to 2,000 people. The variance may be revoked whenever the Department of Environmental Quality determines that the circumstances warranting the variance no longer exist.
2. Incineration -- Where incineration is to be employed, the plans and specifications, along with any other information necessary to evaluate the project, shall be submitted to the Department and approval received prior to construction. In addition, an approved method for the disposal of non-combustible refuse is required. Where incineration is proposed, the following items shall be provided.
 - a. The capacity of the incinerator shall be sufficient for the maximum production of refuse expected.
 - b. Noncombustible refuse shall be disposed of by methods approved by the Department.

- c. Skilled personnel to assure the proper operation and maintenance of the facilities in a nuisance-free manner.
3. Composting -- This method of disposal is acceptable to the Department under the following conditions:
 - a. That plans and specifications and other information necessary to evaluate the project are submitted to the Department and approval received prior to start of construction.
 - b. That provisions are made for the proper disposal of all refuse not considered suitable for composting.
 - c. Skilled personnel shall be provided to assure the proper operation and maintenance of the facilities in a nuisance-free manner.
4. Garbage grinding -- This method, involving the separate collection and disposal of garbage into a community sewerage system through commercial type grinders or mandatory community-wide installation of individual household grinders, will be acceptable to the Department provided that suitable means shall be provided for the disposal of all remaining refuse.
5. Hog feeding -- This method of disposal will only be approved under the following conditions:
 - a. The garbage is collected and stored in suitable containers.
 - b. Only approved type vehicles are used for collection.
 - c. All garbage is effectively heat-treated in accordance with Title 24, Chapter 7, Article 3 (A.R.S. §§ 24-941 through 24-949).
 - d. All remaining refuse, including nonedible garbage, is collected and disposed of separately by methods approved by the Department.
6. Manure disposal -- Manure shall be disposed of by sanitary landfill, composting, incinerating, or used as a fertilizer in such a manner as not to create insect breeding or a nuisance.

Historical Note

Section recodified from A.A.C. R18-8-512, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

ARTICLE 4. RESERVED**ARTICLE 5. REQUIREMENTS FOR SOLID WASTE FACILITIES SUBJECT TO SELF-CERTIFICATION****R18-13-501. Solid Waste Facilities Requiring Self-Certification; Registration Fees**

- A. The following solid waste facilities requiring self-certification under A.R.S. § 49-762.01 shall register with the Department and pay registration fees as provided in this Section by September 30, 2012, and annually thereafter by September 30th:
 1. A transfer facility with a daily throughput of more than 180 cubic yards, including a material recovery facility, but not including:
 - a. A material recovery facility where the incoming materials are primarily source separated recyclables; or
 - b. Community or neighborhood recycling bins including drop boxes, roll off containers, plastic containers used to collect residential, business, and/or governmental recyclable solid waste.
 2. A facility storing 5,000 or more waste tires on any one day and not required to obtain plan approval.
 3. A waste tire shredding and processing facility.
- B. Initial registration for a new facility. The owner or operator of a planned new facility identified in subsection (A) shall submit

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the following information to the Department before beginning construction:

1. The name of the solid waste facility.
 2. The name, mailing address and telephone number of each owner and operator of the solid waste facility.
 3. The physical location of the solid waste facility by physical address, latitude and longitude, or legal description. If none of these are practical, by driving directions from the nearest city or town.
 4. A brief description of operations, including waste management methods, types and volumes of waste handled, waste storage and treatment equipment, and the length of time the waste remains onsite.
 5. A diagram of the property showing its approximate size and the planned location of the solid waste facility or facilities.
 6. Documentation that the facility will comply with local zoning laws or, if the owner is an agency or political subdivision of this state, with A.R.S. § 49-767.
 7. Documentation that the facility has any other environmental permit that is required by statute.
 8. A copy of the public notice in a newspaper of general circulation in the area where the facility will be located stating the intent to construct and operate a new solid waste facility pursuant to A.R.S. § 49-762.05.
- C.** Initial and annual registration for an existing facility. The owner or operator of an existing facility shall submit the following information to the Department annually on a form approved by the Department and note any changes since the last registration:
1. The name of the solid waste facility.
 2. The name, address and telephone number of each owner and operator of the solid waste facility.
 3. The physical location of the solid waste facility by physical address, latitude and longitude, or legal description. If none of these are practical, by driving directions from the nearest city or town.
 4. A brief description of operations, including waste management methods, types and volumes of waste handled, waste storage and treatment equipment, and the length of time the waste remains onsite.
 5. A diagram of the property showing its approximate size and the location of the solid waste facility or facilities.
 6. Documentation that the facility remains in compliance with the most current local zoning laws or with A.R.S. § 49-767, as applicable.
 7. Documentation that the facility continues to hold any other environmental permit that is required by statute.
- D.** Self-certification. With each registration under subsection (B) or (C), the owner or operator shall certify that the information submitted is true, accurate, and complete to the best of the person's knowledge and belief.
- E.** Registration fees. The owner or operator of a transfer facility under subsection (A)(1) shall pay the Department \$1,000 for the initial registration of a new or existing facility, and \$500 for each annual registration thereafter. The owner or operator of a tire facility under subsection (A)(2) or (3) shall pay the Department \$1,000 for the initial registration of a new or existing facility, and \$250 for each annual registration thereafter.
- F.** As used in this Section:
1. "Department" means the Arizona Department of Environmental Quality.
 2. "Material recovery facility" means a transfer facility that collects, compacts, repackages, sorts, or processes commingled recyclable solid waste generated offsite for the purpose of recycling and transport, or where source sepa-

rated recyclable solid waste is processed for sale to various markets, and where the incoming materials are predominantly recyclable solid waste.

3. "Recyclable solid waste" means a product or material described in subsection (F)(3)(a) or (b), and for which subsection (F)(3)(c) is true:
 - a. A product with no useful life remaining for the purposes for which it was produced, or if useful life remains, the product will not, due to location, quantity, or owner choice, remain in use or be reused for a purpose for which it was produced.
 - b. A material that is a result of a process or activity whose purpose was to produce something else.
 - c. The product or material retains some economic value, with or without further processing, as a raw material or feedstock in some process other than incineration or combustion.

Historical Note

New Section made by final rulemaking at 18 A.A.R. 1217, effective July 1, 2012 (Supp. 12-2).

ARTICLE 6. RESERVED**ARTICLE 7. SOLID WASTE FACILITY PLAN REVIEW FEES****R18-13-701. Definitions**

In addition to the definitions provided in A.R.S. §§ 49-701, 49-701.01, and 49-851, and 18 A.A.C. 13, the following definitions apply in this Article:

1. "Aquifer Protection Permit" or "APP" means the permit that is required pursuant to A.R.S. § 49-241.
2. "MSWLF" means a municipal solid waste landfill as defined in A.R.S. § 49-701.
3. "Non-APP requirements for Non-MSWLFs" means 40 CFR 257 requirements and the restrictive covenant and location restrictions required in A.R.S. Title 49, Chapter 4.
4. "Non-MSWLF" means a landfill that is not a municipal solid waste landfill as defined in A.R.S. § 49-701.
5. "RD&D" means research, development, and demonstration.
6. "Review hours" means the hours or portions of hours that the Department's staff spends on a request for a plan review. 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.
7. "Review-related costs" means any of the following costs applicable to a specific plan review:
 - a. Presiding officer services for public hearings on a plan review decision,
 - b. Court reporter services for public hearings on a plan review decision,
 - c. Facility rentals for public hearings on a plan review decision,
 - d. Charges for laboratory analyses performed during the plan review,
 - e. Other reasonable and necessary review-related expenses documented in writing by the Department and agreed to by an applicant.
8. "Solid waste facility plan" means a plan or the individual components of a plan, such as the design, operational, closure, or post-closure plan, or the demonstration of financial responsibility as required by A.R.S. § 49-770, submitted to the Department for review and plan approval.

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Historical Note

Adopted effective July 1, 1996; filed in the Office of the Secretary of State December 1, 1995 (Supp. 95-4). Amended effective May 15, 1997 (Supp. 97-2). Amended by exempt rulemaking at 8 A.A.R. 3747, effective November 1, 2002 (Supp. 02-3). Amended by final rulemaking at 18 A.A.R. 1217, effective July 1, 2012 (Supp. 12-2).

R18-13-702. Solid Waste Facility Plan Review Fees

A. With each application submitted for approval pursuant to A.R.S. § 49-762.03, the applicant shall remit an initial fee in accordance with one of the fee tables in this subsection, unless otherwise provided in subsection (B). This subsection also lists the maximum fees that the Department will bill the applicant. All fees paid shall be payable to the state of Arizona. The Department shall deposit the fees paid into the Solid Waste Fee Fund established pursuant to A.R.S. § 49-881, unless otherwise authorized or required by law.

Fee Tables

Fees for Plan Review of New Solid Waste Facilities		
	Initial	Maximum
Solid Waste Landfills	\$20,000	\$200,000
Non-APP requirements for Non-MSWLFs operating under an APP	\$2,000	\$50,000
Other Solid Waste Facilities Subject to Plan Approval	\$10,000	\$100,000

Fees for Modifications to Solid Waste Facility Plans		
	Initial	Maximum
Solid Waste Landfills - Type IV	\$1,500	\$150,000
Solid Waste Landfills - Type IV - RD&D	\$15,000	\$150,000
Solid Waste Landfills - Type III	\$750	\$75,000
Other Solid Waste Facilities Subject to Plan Approval - Type IV	\$750	\$75,000
Other Solid Waste Facilities Subject to Plan Approval - Type III	\$500	\$50,000

Fees for Review of Financial Responsibility Plans for Solid Waste Facilities		
	Initial	Maximum
Annual Review for Solid Waste Landfills	\$600 Flat Fee	N/A
Other Solid Waste Facilities	\$200	\$5,000

B. The Department shall bill an applicant for plan review services, subject to an hourly rate, no more than monthly, but at least semi-annually. The following information shall be included in each bill:

1. The dates of the billing period;
2. 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:
 - a. Each review task performed,
 - b. The facility and operational unit involved, and
 - c. The hourly rate;
3. A description and amount of any other reasonable review-related cost; and

4. 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.

- C. Within 30 days after the Department makes a final determination whether to approve or disapprove of the facility plan, or when an applicant withdraws or closes the application for review, the Department shall prepare and issue a final itemized bill of its review. If the Department determines that the actual cost of reviewing the plan is less than the initial fee and any interim fees paid, the Department shall refund the difference to the applicant within 30 days after the issuance of the approval or disapproval of the application. If the Department determines that the actual cost of plan review is greater than the corresponding amount listed, the Department shall list the amount that the applicant owes on the final itemized bill, except that the final itemized bill shall not exceed the applicable maximum fee specified in subsection (A). The applicant shall pay in full the amount due within 30 days of receipt of the final itemized bill.
- D. If the final bill is not paid within the 30 days, the Department shall mail a second notice to the applicant. Failure to pay the amount due within 60 days of receipt of the notice shall result in the Department initiation of proceedings for suspension of the approval, in accordance with A.R.S. § 49-782. The suspension shall continue until full payment is received at the Department. If full payment is not received at the Department within 365 days of the date of the approval, the approval shall be revoked in accordance with A.R.S. § 49-782. The Department shall not review any further plans for an entity which has not paid all fees due for a previous review of a solid waste facility plan.
- E. When determining actual cost under subsection (C), the Department shall use an hourly billing rate for all review hours spent working on the review of a plan, and add review-related costs which were incurred but are not included in the hourly billing rate.
- F. The hourly rate is \$122.00, beginning July 1, 2012, and shall remain in effect until it is either changed or repealed.

Historical Note

Adopted effective July 1, 1996; filed in the Office of the Secretary of State December 1, 1995 (Supp. 95-4). Corrected typographical error "facilities" in Schedules A, B, and C, to reflect Section filed in the Office of the Secretary of State December 1, 1995. Section amended effective May 15, 1997; except for special waste management plan component fees listed in Schedules A, B, and C, which become effective July 1, 1997 (Supp. 97-2). Amended by exempt rulemaking at 5 A.A.R. 3869, effective October 1, 1999 (Supp. 99-3). Amended by exempt rulemaking at 8 A.A.R. 3747, effective November 1, 2002 (Supp. 02-3). Amended by final rulemaking at 18 A.A.R. 1217, effective July 1, 2012 (Supp. 12-2).

R18-13-703. Review of Bill

- A. An applicant who disagrees with the final bill received from the Department for plan review and issuance or denial of a solid waste facility plan approval under this Article may make a written request to the Director for a review of the bill and may pay the bill under protest. The request for review shall specify the matters in dispute and shall be received by the Department within 10 working days of the date of receipt of the final bill.
- B. Unless the Department and applicant agree otherwise, the review shall take place within 30 days of receipt by the Department of the request. The Director shall make a final decision as to whether the time and costs billed are correct and

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reasonable. The final decision shall be mailed to the applicant within 10 working days after the date of the review and is subject to appeal pursuant to A.R.S. § 49-769.

Historical Note

Adopted effective July 1, 1996; filed in the Office of the Secretary of State December 1, 1995 (Supp. 95-4). Amended by final rulemaking at 18 A.A.R. 1217, effective July 1, 2012 (Supp. 12-2).

R18-13-704. Repealed

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 3747, effective November 1, 2002 (Supp. 02-3). Section repealed by final rulemaking at 18 A.A.R. 1217, effective July 1, 2012 (Supp. 12-2).

R18-13-705. Repealed

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 3747, effective November 1, 2002 (Supp. 02-3). Section repealed by final rulemaking at 18 A.A.R. 1217, effective July 1, 2012 (Supp. 12-2).

R18-13-706. Repealed

Historical Note

New Section made by exempt rulemaking at 8 A.A.R. 3747, effective November 1, 2002 (Supp. 02-3). Section repealed by final rulemaking at 18 A.A.R. 1217, effective July 1, 2012 (Supp. 12-2).

ARTICLE 8. GENERAL PERMITS

R18-13-801. General Permit Fees

- A. The Department shall assess annual fees for operation under a general permit established in rule as described in the Table below.
- B. In addition to the technical requirements proposed for any general permit to be included in this Article, the Department shall propose the category to be assigned to the permit according to the Table below.
- C. An applicant shall pay the initial fee when approval to operate is requested. The Department shall bill an annual fee to facilities that have not notified the Department that they are no longer operating and have met the closure requirements of this Chapter.
- D. For the purpose of this Article, "complex" has the meaning in A.A.C. R18-1-501. "Standard" is any facility that is not complex.

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Category	Initial Fee	Annual Fee
Collection, Storage and Transfer-Standard	\$750	\$100
Collection, Storage and Transfer-Complex	\$7,500	\$1,000
Treatment-Standard	\$1,000	\$100
Treatment-Complex	\$10,000	\$1,000
Disposal	\$15,000	N/A

Historical Note

New Section made by final rulemaking at 18 A.A.R. 1217, effective July 1, 2012 (Supp. 12-2).

R18-13-802. Disposal General Permit: Non-Municipal Solid Waste Landfills at Mining Operations

- A. This general permit is adopted pursuant to A.R.S. § 49-706 as an alternative to plan approvals for facilities identified in A.R.S. § 49-762(A)(1). This general permit authorizes disposal of solid waste in a landfill at a mining operation if the landfill meets one of the following criteria:
 - 1. The landfill is identified as a discharging facility in an area-wide aquifer protection permit and is located within the pollutant management area developed for that permit; or
 - 2. The landfill is located within the pollutant management area of an area-wide aquifer protection permit but is exempt from the permit requirement because it contains only inert material as defined in A.R.S. § 49-201; or
 - 3. The landfill is located at a site qualifying as a groundwater protection permit facility as defined in A.R.S. § 49-241.01(C) and the site has submitted an administratively complete application for an aquifer protection permit that has not been denied. Landfills that are located at mining operations and that are subject to best management practices under A.R.S. § 49-762.02(6) are required to comply with those practices and do not require coverage under this general permit.
- B. Authorized and prohibited materials.
 - 1. Disposal of the following is allowed under this general permit:
 - a. Solid waste generated at the mining operation where the landfill is located; and
 - b. Incidental amounts of putrescible waste generated at the mining operation where the landfill is located. For the purposes of this Section, "putrescible waste" means solid waste which contains organic matter capable of being decomposed by microorganisms and of such a character and proportion as to be capable of attracting or providing food for birds.
 - 2. Disposal of the following is prohibited under this general permit:
 - a. Used oil as defined in A.R.S. § 49-801(3).
 - b. Human excreta as defined in R18-13-1102.
 - c. Special waste as defined in A.R.S. § 49-851(A)(5).
 - d. Biohazardous medical waste as defined in R18-13-1401.
 - e. Radioactive waste material regulated for disposal pursuant to Title 12, Chapter 1 of the Arizona Administrative Code.
 - f. Hazardous waste as defined in A.R.S. § 49-921(5), including hazardous waste generated by a conditionally exempt small quantity generator.
 - g. Bulk or noncontainerized liquid waste.
 - h. Waste containing polychlorinated biphenyls regulated for disposal pursuant to 40 CFR 761.
- C. A person may operate a landfill at a mining operation under this general permit if:
 - 1. Operation of the landfill complies with the requirements of this Section;
 - 2. The person files a Notice of Intent to Operate that complies with subsections (D) and (E);
 - 3. The person satisfies any requests for additional information from the Department regarding the Notice of Intent to Operate landfill operation and receives a written Authorization to Operate from the Director; and
 - 4. The person submits the applicable fee established in R18-13-801 for the Disposal category.
- D. Notice of Intent to Operate. An applicant shall submit to the Department a Notice of Intent to Operate under this general permit. The Notice shall contain:

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1. The name, address, and telephone number of the applicant;
 2. The name, address, and telephone number of a contact person familiar with the operation of the facility;
 3. The legal description of the landfill area, latitude and longitude coordinates, a detailed figure(s) showing both the existing landfill boundary and the anticipated future waste footprint of the landfill at the time of closure, and a map showing the location of the landfill within the mining operation;
 4. A description of how the applicant will meet the public access restrictions in subsection (H)(3);
 5. A description of how the applicant will meet the cover requirements in subsection (H)(4);
 6. A description of how the applicant will meet the methane requirements in subsection (H)(5). For landfills that have accepted waste prior to the effective date of this Section only, the applicant shall include recent methane monitoring sampling results from either:
 - a. One (1) measurement per acre of landfill waste footprint; or
 - b. A minimum of four (4) monitoring probes installed to the depth of refuse around the perimeter of the landfill and measured quarterly for the presence of methane gas for a period of one (1) year;
 7. A narrative description of the landfill, including whether the landfill is existing or planned, the acreage of the current and planned waste footprint, estimated disposal capacity in cubic yards, expected lifespan, projected rate of waste disposal in tons per day or per week, and sources of solid waste generation;
 8. A listing of any other federal or state environmental permits issued for or needed by the landfill, including any individual plan approval, APP, Groundwater Quality Protection Permit, or Notice of Disposal; and
 9. A signature on the Notice of Intent to Operate certifying that the applicant agrees to comply with all terms of this general permit.
- E.** Existing facility application deadline. Existing facilities that qualify for coverage under subsections (A)(1), (A)(2), or (A)(3) on the effective date of this rule shall submit a Notice of Intent to Operate within 2 years of the effective date of this rule to obtain coverage. The Director may extend this date in individual cases if the facility could not have submitted an administratively complete Notice in time with reasonable diligence.
- F.** Authorization review.
1. Inspection. The Department may inspect the facility to determine that the applicable terms of this general permit are being met.
 2. Authority to Operate issuance.
 - a. If the Department determines, based on its review and an inspection, if conducted, that the facility conforms to the requirements of this general permit, the Director shall issue an Authority to Operate.
 - b. The Authority to Operate authorizes the person to operate the landfill under the terms of this general permit.
 3. Authority to Operate denial. If the Department determines, based on its review and an inspection, if conducted, that the facility does not conform to the requirements of this general permit, the Director shall notify the person of the decision not to issue the Authority to Operate and the person shall not operate the landfill under this general permit. The notification shall inform the person of:
 - a. The reason for the denial with reference to the statute or rule on which the denial is based;
 - b. The person's right to appeal the denial, including the number of days the applicant has to file a protest challenging the denial and the name and telephone number of the Department contact person who can answer questions regarding the appeals process; and
 - c. The person's right to request an informal settlement conference under A.R.S. §§ 41-1092.03(A) and 41-1092.06.
- G.** Statutory requirements. The landfill shall be:
1. Located according to the applicable location restrictions in A.R.S. § 49-772; and
 2. Subject to a restrictive covenant recorded pursuant to A.R.S. § 49-771.
- H.** Operational requirements.
1. Inspect the landfill at least quarterly and after large storm events for overall integrity and condition of the facility, including stormwater diversions, and conduct maintenance and repairs as needed. For the purposes of this Section, a "large storm event" is defined as one-half inch of precipitation in any 24-hour period.
 2. Direct storm water runoff from surrounding areas away from the landfill.
 3. Restrict public access to the landfill or to the mining operation site by signs or physical barriers, including natural barriers.
 4. Apply cover at such frequencies and in such a manner as to control windblown dispersion of waste, reduce the risk of fire and impede disease vectors' access to the waste, taking into account the types and volumes of waste placed in the landfill, the frequency of disposal, and other relevant considerations. The Department may allow other techniques that are demonstrated to be equally protective as applying cover material.
 5. Concentrations of methane gas shall not exceed 25% of the lower explosive limit in facility structures within 100 feet of the landfill boundary and shall not exceed the lower explosive limit beyond the landfill boundary.
 6. Methane monitoring.
 - a. For landfills that have accepted waste prior to the effective date of this Section only, the applicant shall include recent methane monitoring data as described in subsection (D)(6) with the Notice of Intent to Operate.
 - i. If the data demonstrate that concentrations of methane gas do not exceed 25% of the lower explosive limit, then no methane monitoring is required in order to operate under this permit.
 - ii. If the data demonstrate that concentrations of methane gas exceed 25% of the lower explosive limit, then annual methane monitoring using one of the data gathering methods described in subsection (D)(6) is required in order to operate under this permit. Results of such annual methane monitoring shall be submitted to the Department.
 - (1) A person operating a landfill subject to annual methane monitoring may reduce monitoring to once every five years if the results of three consecutive annual sampling events demonstrate that concentrations of methane gas do not exceed 25% of the lower explosive limit.
 - (2) A person operating a landfill subject to annual methane monitoring may request

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the Department to reduce or eliminate such monitoring based on any other methods approved by the Department, including consideration of the potential for methane gas to be present in facility structures within 100 feet of the landfill boundary at concentrations exceeding 25% of the lower explosive limit.

- b. For landfills that have not accepted waste prior to the effective date of this Section, no methane monitoring is required in order to obtain coverage or operate under this permit.
7. Maintain an operating record that documents compliance with the conditions in this permit.
- I. Recordkeeping. A permittee shall maintain the following information for at least 10 years and make it available to the Department upon request:
 1. Landfill construction drawings and as-built plans, if available;
 2. The operating record required by subsection (H)(7); and
 3. Methane monitoring results, if any, obtained under subsection (H)(6).
- J. Reporting requirements. A permittee shall report the following to the Department:
 1. Methane monitoring concentrations that exceed those listed in subsection (H)(5) within 7 days of the determination.
 2. A change in ownership or expansion of the planned waste footprint as soon as practicable. These events shall require the filing of a new Notice of Intent to Operate.
- K. General applicability. Landfills covered under this general permit:
 1. Are not subject to rules adopted by the Department under A.R.S. § 49-761.
 2. Are exempt from the solid waste facility plan requirements in A.R.S. §§ 49-762.03 and 49-762.04 as provided in A.R.S. § 49-762(B).
- L. For the purposes of this Section, "mining" has the definition at A.R.S. § 27-301.

Historical Note

New Section made by final rulemaking at 20 A.A.R. 2679, effective November 9, 2014 (Supp. 14-3).

ARTICLE 9. SOLID WASTE MANAGEMENT PLANNING

R18-13-901. Reserved

R18-13-902. Expired

Historical Note

Section recodified from A.A.C. R18-8-402, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2983, effective September 15, 2016 (Supp. 16-3).

ARTICLE 10. RESERVED**ARTICLE 11. COLLECTION, TRANSPORTATION, AND DISPOSAL OF HUMAN EXCRETA**

Article 11 recodified from existing Sections in 18 A.A.C. 8, Article 6 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

R18-13-1101. Reserved

R18-13-1102. Definitions

- A. "Chemical toilet" means a toilet with a watertight, impervious pail or tank that contains a chemical solution placed directly under the seat and a pipe or conduit that connects the riser to the tank.

- B. "Department" means the Department of Environmental Quality or a local health department designated by the Department.
- C. "Earth-pit privy" means a device for disposal of human excreta in a pit in the earth.
- D. "Human excreta" means human fecal and urinary discharges and includes any waste that contains this material.
- E. "License" means a stamp, seal, or numbered certificate issued by the Department.
- F. "Pail or can type privy" means a privy equipped with a watertight container, located directly under the seat for receiving deposits of human excreta, that provides for removal of a waste receptacle that can be emptied and cleaned.
- G. "Person" means the state, a municipality, district or other political subdivision, a cooperative, institution, corporation, company, firm, partnership, or individual.
- H. "Sewage" means the waste from toilets, baths, sinks, lavatories, laundries, and other plumbing fixtures in residences, institutions, public and business buildings, mobile homes, and other places of human habitation, employment, or recreation.

Historical Note

Recodified from R18-8-602 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4). Amended by final rulemaking at 9 A.A.R. 1356, effective June 7, 2003 (Supp. 03-2).

R18-13-1103. General Requirements; License Fees

- A. Any person owning or operating a vehicle or appurtenant equipment used to store, collect, transport, or dispose of sewage or human excreta that is removed from a septic tank or other onsite wastewater treatment facility; earth pit privy, pail or can type privy, or other type of privy; sewage vault; or fixed or transportable chemical toilet shall obtain a license for each vehicle from the Department. The person shall apply, in writing, on forms furnished by the Department and shall demonstrate that each vehicle is designed and constructed to meet the requirements of this Article.
- B. A person shall operate and maintain the vehicle and equipment so that a health hazard, environmental nuisance, or violation of a water quality standard established under 18 A.A.C. 11 is not created.
- C. License terms.
 1. For each vehicle newly licensed after June 30, 2012, the initial license fee shall be \$250 and shall be submitted with the license application. After initial licensure of a vehicle, the Department will renew the license annually after payment of a \$75 fee according to subsection (C)(3). The licensee shall submit the Department approved renewal form and annual license fee to the Department no later than 30 days before expiration.
 2. For those vehicles licensed before July 1, 2012, the initial license fee shall be \$75 and shall be paid within 30 days of receipt of an invoice from the Department. The license shall be valid for one year. The licensee shall submit the Department approved renewal form and the annual license fee of \$75 to the Department no later than 30 days before expiration.
 3. Each vehicle license may be renewed if:
 - a. The annual license fee is paid,
 - b. The owner or operator is in compliance with subsection (D),
 - c. The vehicle is operated by the same person for the same purpose, and
 - d. The vehicle is maintained according to this Article.
 4. The license is not transferable either from person to person or from vehicle to vehicle.

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5. The license holder shall ensure that the license number is plainly and durably inscribed in contrasting colors on the side door panels of the vehicle and the rear face of the tank in figures not less than 3 inches high, and that the numbers are legible at all times.
- D.** Any person owning or operating a vehicle or appurtenant equipment used to collect, store, transport, or dispose of sewage or human excreta shall obtain any required permit from the local county authority in each county in which the person proposes to operate.
- Historical Note**
- Recodified from R18-8-603 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4). Section repealed; new Section made by final rulemaking at 9 A.A.R. 1356, effective June 7, 2003 (Supp. 03-2). Amended by final rulemaking at 18 A.A.R. 1217, effective July 1, 2012 (Supp. 12-2).
- R18-13-1104. Repealed**
- Historical Note**
- Recodified from R18-8-604 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4). Section repealed by final rulemaking at 9 A.A.R. 1356, effective June 7, 2003 (Supp. 03-2).
- R18-13-1105. Reserved**
- R18-13-1106. Inspection**
- The Department may inspect vehicles and appurtenant equipment used to collect, store, transport, or dispose sewage or human excreta as necessary to assure compliance with this Article.
- Historical Note**
- Recodified from R18-8-606 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4). Amended by final rulemaking at 9 A.A.R. 1356, effective June 7, 2003 (Supp. 03-2).
- R18-13-1107. Reserved**
- R18-13-1108. Repealed**
- Historical Note**
- Recodified from R18-8-608 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4). Section repealed by final rulemaking at 9 A.A.R. 1356, effective June 7, 2003 (Supp. 03-2).
- R18-13-1109. Reserved**
- R18-13-1110. Reserved**
- R18-13-1111. Reserved**
- R18-13-1112. Sanitary Requirements**
- A.** A person owning or operating a vehicle or appurtenant equipment to collect, store, transport, or dispose of sewage or human excreta shall ensure that:
1. Sewage and human excreta is collected, stored, transported, and disposed of in a sanitary manner and does not endanger the public health or create an environmental nuisance;
 2. The vehicle is equipped with a leak-proof and fly-tight container that has a capacity of at least 750 gallons and all portable containers, pumps, hoses, tools, and other implements are stored within a covered and fly-tight enclosure when not in use;
 3. Contents intended for removal are transferred as quickly as possible by means of a portable fly-tight container or suction pump and hose to the transportation container.
4. The transportation container is tightly closed and made fly-tight immediately after the contents have been transferred,
5. Portable containers are kept fly-tight while being transported to and from the vehicle,
6. Any waste dropped or spilled in the process of collection is cleaned up immediately and the area disinfected;
7. The vehicle, tools, and equipment are maintained in good repair at all times and, at the end of each day's work, all portable containers, transportation containers, suction pumps, hose, and other tools are cleaned and disinfected; and
8. All wastes collected are disposed of according to the recommendations of the local county health department and that no change in the recommended method of disposal is made without its prior approval. The local county health department shall recommend disposal by one of the following methods:
- a. At a designated point into a sewage treatment facility or sewage collection system with the approval of the owner or operator of the facility or system,
 - b. By burying all wastes from chemical toilets in an area approved by the local county health department, or
 - c. Into a sanitary landfill with approval of the owner or operator of the landfill and following any precautions designated by the owner and operator to protect the health of the workers and the public.
- B.** Open dumping is prohibited except in designated areas approved by the local county health department.
- Historical Note**
- Recodified from R18-8-612 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4). Amended by final rulemaking at 9 A.A.R. 1356, effective June 7, 2003 (Supp. 03-2).
- R18-13-1113. Repealed**
- Historical Note**
- Recodified from R18-8-613 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4). Section repealed by final rulemaking at 9 A.A.R. 1356, effective June 7, 2003 (Supp. 03-2).
- R18-13-1114. Repealed**
- Historical Note**
- Recodified from R18-8-614 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4). Section repealed by final rulemaking at 9 A.A.R. 1356, effective June 7, 2003 (Supp. 03-2).
- R18-13-1115. Repealed**
- Historical Note**
- Recodified from R18-8-615 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4). Section repealed by final rulemaking at 9 A.A.R. 1356, effective June 7, 2003 (Supp. 03-2).
- R18-13-1116. Suspension and Revocation**
- A.** If a Department inspection indicates that a licensed vehicle is not maintained and operated or work cannot be performed according to this Article, the Department shall notify the owner in writing of all violations noted.
- B.** The Department shall give the owner a reasonable period of time to correct the violations and comply with the provisions of this Article. If the owner fails to comply within the time limit specified, the Department may suspend or revoke the

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vehicle license based on the number and severity of violations. The Department shall follow the provisions of A.R.S. Title 41, Chapter, Article 10 in any suspension or revocation proceeding.

- C. The Department shall consider the revocation or suspension of a permit by a local health department for violation of this Article as grounds for revocation of the vehicle license. The local health department shall immediately suspend both the vehicle license and the permit issued by the local health department for gross violation of this Article if in the opinion of the local health department a serious health hazard or environmental nuisance exists.
- D. The owner of the vehicle whose license is suspended or revoked may appeal the final administrative decision as permitted under A.R.S. § 41-1092.08.

Historical Note

Recodified from R18-8-616 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4). Amended by final rulemaking at 9 A.A.R. 1356, effective June 7, 2003 (Supp. 03-2).

R18-13-1117. Reinstatement

Upon request of the vehicle owner, the Department may reinstate a suspended or revoked vehicle license following a Department reinspection and based on an evaluation of compliance with the requirements of this Article.

Historical Note

Recodified from R18-8-617 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4). Amended by final rulemaking at 9 A.A.R. 1356, effective June 7, 2003 (Supp. 03-2).

R18-13-1118. Repealed**Historical Note**

Recodified from R18-8-618 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4). Section repealed by final rulemaking at 9 A.A.R. 1356, effective June 7, 2003 (Supp. 03-2).

R18-13-1119. Repealed**Historical Note**

Recodified from R18-8-619 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4). Section repealed by final rulemaking at 9 A.A.R. 1356, effective June 7, 2003 (Supp. 03-2).

R18-13-1120. Repealed**Historical Note**

Recodified from R18-8-620 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4). Section repealed by final rulemaking at 9 A.A.R. 1356, effective June 7, 2003 (Supp. 03-2).

ARTICLE 12. WASTE TIRES**R18-13-1201. Definitions**

In addition to the definitions provided in A.R.S. § 44-1301, the following definitions apply in this Article:

“Aquifer protection permit” means an authorization issued by the Department under A.R.S. § 49-241 et seq.

“Burial cell” means an area where mining waste tires are placed in or on the land for burial.

“Mining” means activities dedicated to the exploration, extraction, beneficiation, and processing, including smelting and refining, of metallic ores.

“Mining facility” means any land, building, installation, structure, equipment, device, conveyance, or area dedicated to mining.

“Mining waste tire” means an off-road tire that is greater than three feet in outside diameter that was used in mining.

“Operator” means an owner, part owner, management agency, or lessee of a mining facility, a person responsible for the overall operation or control of a mining facility, or an authorized representative of the operator.

“Person” is defined in A.R.S. § 49-201.

“Waste tire cover” means waste tires that are chopped or shredded into pieces that do not exceed four inches in diameter used for cover at a solid waste landfill.

Historical Note

Section recodified from A.A.C. R18-8-701, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3). Amended by final rulemaking at 7 A.A.R. 5695, effective November 27, 2001 (Supp. 01-4).

R18-13-1202. Burial of Mining Waste Tires

- A. The operator shall file with the Director a one-time notice within 24 hours after commencement of burial of mining waste tires consisting of a map of the mining facility that clearly identifies the locations and dimensions of each burial cell and the estimated number of mining waste tires that will be buried in each cell. The operator shall identify each burial cell using an alphabetical or numeric identifier. If a mining facility uses a new burial cell not included in the commencement of burial notice, the operator shall notify the Department within 24 hours after commencement of burial in that cell.
- B. An operator shall only permit burial of mining waste tires in areas that are, or will be, included in an aquifer protection permit issued for the mining facility. An operator shall not permit burial of mining waste tires in leach areas unless prior to burial the Department issues an aquifer protection permit covering the leach area.
- C. An operator shall not permit a burial cell to be located within 10 feet of another burial cell.
- D. An operator shall not permit the burial of mining waste tires unless the tires are waste generated at the mining facility or another mining facility of the same owner.

Historical Note

Section recodified from A.A.C. R18-8-702, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3). Amended by final rulemaking at 7 A.A.R. 5695, effective November 27, 2001 (Supp. 01-4).

R18-13-1203. Cover Requirements

- A. The operator shall cover all mining industry off-road motor vehicle waste tires buried pursuant to this Article with a minimum of 6 inches of earthen material within 50 days of placement, or sooner if necessary, to prevent vector breeding or fire.
- B. The operator shall place final cover over the off-road motor vehicle waste tires within 180 days after placement of the last tire which will be buried in a cell. The final cover shall consist of earthen material which is at least 3 feet deep or which complies with the requirements of the aquifer protection permit for the area where the burial cell is located.
- C. The operator shall maintain final cover in compliance with this Section for as long as the mining industry off-road motor vehicle waste tires remain in the burial cell.

Historical Note

Section recodified from A.A.C. R18-8-703, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

R18-13-1204. Annual Report

By March 30 of each year, until a burial cell closure certification is filed with the Department, the operator of the mining facility shall file an annual report with the Director which documents the location of each burial cell established during the preceding calendar year, the alphabetical or numerical identifier of each burial cell, and the number of off-road motor vehicle waste tires which were placed in each burial cell for burial during the preceding calendar year. If no tires were placed in the burial cell for burial during the preceding year, the annual report shall so indicate.

Historical Note

Section recodified from A.A.C. R18-8-704, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

R18-13-1205. Burial Cell Closure Certification

An operator shall file with the Director a burial cell closure certification within 30 days after placing final cover over the mining waste tires under R18-13-1203(B). The certificate shall contain a statement by the operator that no additional tires will be buried in the burial cell and a statement by an Arizona registered engineer certifying that the cover requirements of R18-13-1203 have been met.

Historical Note

Section recodified from A.A.C. R18-8-705, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3). Amended by final rulemaking at 7 A.A.R. 5695, effective November 27, 2001 (Supp. 01-4).

R18-13-1206. Storage

At no time shall more than 500 mining industry off-road motor vehicle waste tires be stored at the mining facility outside of a burial cell unless the mining facility has Department approval to operate a waste tire collection facility, pursuant to A.R.S. §§ 44-1304 and 49-762.

Historical Note

Section recodified from A.A.C. R18-8-706, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

R18-13-1207. Maintenance of Records

For at least three years after the burial cell closure certification is filed with the Department, the mining facility operator shall maintain, at the mining facility, records which document the number of tires buried in each cell.

Historical Note

Section recodified from A.A.C. R18-8-707, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

R18-13-1208. Inspections

The Department may inspect a mining facility, during regular operating hours, to determine whether mining industry off-road motor vehicle waste tire burial is in compliance with this Article.

Historical Note

Section recodified from A.A.C. R18-8-708, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

R18-13-1209. Repealed**Historical Note**

Section recodified from A.A.C. R18-8-709, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3). Section repealed by final rulemaking at 7 A.A.R. 5695, effective November 27, 2001 (Supp. 01-4).

R18-13-1210. Waste Tire Cover

Waste tires used as cover at a solid waste landfill shall be used according to the solid waste facility plan required by A.R.S. § 49-762. An operator shall not permit mining waste tires to be used as cover at a solid waste landfill for more than two consecutive days at a time.

Historical Note

Section recodified from A.A.C. R18-8-710, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3). Amended by final rulemaking at 7 A.A.R. 5695, effective November 27, 2001 (Supp. 01-4).

R18-13-1211. Registration of New Waste Tire Collection Sites; Fee

- A. A new waste tire collection site shall not begin operation after July 20, 2011, until the owner or operator registers with the Department. The owner or operator shall register on a form approved by the Department that includes a statement that the site is in compliance with A.R.S. § 49-762.07(F) and A.R.S. Title 44, Chapter 9, Article 8, as applicable. The owner or operator of a new waste tire collection site that begins operation after July 20, 2011, shall pay an initial registration fee of \$500 within 30 days of invoice receipt. For purposes of this Section, "new waste tire collection site" means a waste tire collection site as defined in A.R.S. § 44-1301 that did not operate as a collection site on or before July 20, 2011.
- B. The owner or operator shall pay a \$75 registration fee annually thereafter within 30 days of invoice receipt.

Historical Note

New Section made by final rulemaking at 18 A.A.R. 1217, effective July 1, 2012 (Supp. 12-2).

R18-13-1212. Registration of Outdoor Used Tire Sites; Fee

- A. A person shall not store 100 or more used tires outdoors until the person registers with the Department. A person that stores 100 or more used tires outdoors after July 20, 2011, shall pay an initial registration fee of \$500 within 30 days of invoice receipt. The person shall register on a form approved by the Department that includes a statement that the site is in compliance with A.R.S. § 49-762.07(F) and A.R.S. Title 44, Chapter 9, Article 8, as applicable.
- B. A \$75 registration fee shall be paid annually thereafter within 30 days of invoice receipt.
- C. For the purposes of this Section:
1. "Used tire" means any tire which has been used for more than one day on a motor vehicle.
 2. "Outdoors" means other than inside a building with a weatherproof roof.

Historical Note

New Section made by final rulemaking at 18 A.A.R. 1217, effective July 1, 2012 (Supp. 12-2).

R18-13-1213. Facilities Subject to More Than One Tire Site Registration; Single Fee

A person who is required to register a tire facility under more than one of the Sections listed in subsections (1) through (3) shall register and follow procedures under each Section, but is only required to pay the registration fees under the Section with the highest fees.

1. R18-13-1211.
2. R18-13-1212.

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3. R18-13-501.

Historical Note

New Section made by final rulemaking at 18 A.A.R. 1217, effective July 1, 2012 (Supp. 12-2).

ARTICLE 13. SPECIAL WASTE**R18-13-1301. Definitions**

In addition to the terms prescribed in A.R.S. § 49-851, the terms in this Article shall have the following meanings:

1. "Disposal" means discharging, depositing, injecting, dumping, spilling, leaking, or placing special waste into or on land or water so that the special waste or any constituent of the special waste may enter the environment, be emitted into the air, or discharged into any waters, including groundwater.
2. "Exception report" means a report that a generator shall submit to the Director which notifies the Director that the generator has not received a copy of the special waste manifest from the primary or alternate special waste receiving facility to which the special waste was sent pursuant to the generator's instructions on the special waste manifest, or from any special waste receiving facility to which special waste was sent.
3. "Generator" means a person whose act or process onsite produces a special waste listed in, or designated pursuant to, A.R.S. §§ 49-852, 49-854, and 49-855, or whose act or process first causes such special waste to be subject to regulation.
4. "Identification number" means an alphanumeric identifier issued by the Department to each generator, special shipper, and special waste receiving facility to be used on documents, as required pursuant to this Article, in conjunction with shipment of special waste.
5. "Off-site consignment" means a generator's delivery of materials or wastes for transport off-site to a special waste receiving facility within Arizona for treatment, storage, recycling, or disposal.
6. "Off-site" means any property located within Arizona that is not onsite as defined in A.R.S. § 49-851(3).
7. "Operator" means a person who owns and controls all or part of a special waste receiving facility, or who leases, operates, or controls such facility, a person responsible for the overall operation of such a facility, a management agency, or an authorized representative.
8. "Recycling" means recycling as defined in A.R.S. § 49-831(21).
9. "Shredder residue" means waste from the shredding of motor vehicles.
10. "Significant manifest discrepancy" means a difference of more than 10% by weight for bulk shipments, any variation in a piece count for a batch delivery, or any difference in the type of special waste received as compared to the type of special waste listed on the manifest.
11. "Special waste receiving facility" means an off-site location to which special waste is sent to be treated, recycled, stored, or disposed.
12. "Special waste manifest" means a form provided by the Department, shown as Exhibit A to this Article, and used to identify the origin, quantity, composition, routing, and destination of special waste during its transportation from a generator's facility to a special waste receiving facility.
13. "Special waste shipper" means a person who transports special waste for off-site treatment, recycling, storage, or disposal.

14. "Treatment" means any method, technique, or process designed to change the physical, chemical, or biological character or composition of special waste.

Historical Note

Section recodified from A.A.C. R18-8-301, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

R18-13-1302. Special Waste Generator Manifesting Requirements

- A. A generator shall request a generator identification number on a form provided by the Director, and shown as Exhibit B to this Article, prior to shipping special waste. Within 30 days of receiving the completed form, the Director shall issue the identification number to the generator.
- B. Prior to off-site consignment of special waste, the generator shall do all of the following:
 1. Complete and sign the "Generator" section of a special waste manifest.
 2. Obtain the handwritten signature of the special waste shipper on the special waste manifest.
 3. Retain the generator's copy of the special waste manifest.
 4. Give the special waste manifest and the remaining attached copies to the special waste shipper or forward it to the receiving facility.
- C. Within 14 days after shipment was accepted by a special waste shipper for off-site consignment, the generator shall submit to the Director one legible copy of each special waste manifest with the generator's section completed and containing signatures of the generator and special waste shipper.
- D. If, within 35 days after the date the waste was accepted by the initial special waste shipper, the generator does not receive a completed copy of this special waste manifest with the handwritten signature of the special waste receiving facility operator, the generator shall contact the special waste shipper and the special waste receiving facility operator to determine the status of the special waste.
- E. The generator shall submit an exception report to the Director if the generator does not receive a completed, signed, legible copy of the special waste manifest within 45 days of the date the waste was accepted by the initial special waste shipper for off-site consignment. The exception report shall contain both of the following:
 1. A cover letter, signed by the generator, which explains the efforts made to locate the special waste and the results of those efforts.
 2. A legible copy of the special waste manifest which was signed by the generator and the special waste shipper and retained by the generator.
- F. The generator shall retain a legible copy of each signed special waste manifest for at least three years from the date of acceptance of a shipment of special waste for off-site consignment.
- G. If a person is required to have a manifest, shipping paper or shipping record under federal law for the special waste, the federal manifest, shipping paper, or shipping record may be used in lieu of the Arizona special waste manifest form so long as the federal manifest, shipping paper, or shipping record includes all the information required on the Arizona special waste manifest form.

Historical Note

Section recodified from A.A.C. R18-8-302, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

R18-13-1303. Special Waste Shipper Manifesting Requirements

- A. A special waste shipper who receives special waste in Arizona for transport to a special waste receiving facility in Arizona shall request a special waste shipper identification number on a form provided by the Director and shown as Exhibit B to this Article. The Director shall issue an identification number within 30 days of receipt of the completed form.
- B. A special waste shipper shall:
1. Accept special waste for intrastate shipment to a special waste receiving facility only if the waste is accompanied by a special waste manifest which is completed and signed in accordance with the provisions of R18-8-302.
 2. Deliver the entire shipment of special waste to a special waste receiving facility as designated on the special waste manifest. If unable to deliver the special waste to the primary or alternate special waste receiving facility designated on the special waste manifest:
 - a. Return the special waste to the generator, or
 - b. Contact the generator and obtain instructions for an alternate special waste receiving facility and deliver the waste accordingly.
- C. Shipments of special waste between facilities owned by the same generator shall be exempt from the requirements of rules adopted pursuant to A.R.S. § 49-856.

Historical Note

Section recodified from A.A.C. R18-8-303, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

R18-13-1304. Special Waste Receiving Facility Manifesting Requirements

- A. A special waste receiving facility shall request an identification number on a form provided by the Director, and shown as Exhibit B to this Article, and obtain the number prior to receiving special waste. The Department shall issue the identification number within 30 days of receipt of the completed form.
- B. A special waste receiving facility shall receive only special waste for which it has a special waste manifest signed and dated by the generator and special waste shipper. In the "Facility" section of the special waste manifest, the operator of the special waste receiving facility shall do all of the following:
1. Enter the identification number.
 2. Sign and date each copy of a special waste manifest to certify that the type and amount of special waste, as stated on the special waste manifest, was received.
 3. Indicate on the special waste manifest any significant discrepancies between the description, volume, or weight of the special waste as stated on the special waste manifest and the special waste received.
- C. After completing the "Facility" portion of the special waste manifest, the operator of the special waste receiving facility shall send one legible copy each of the signed special waste manifest to the Director and the generator within 30 days of the delivery of the special waste.
- D. Upon discovery of a significant manifest discrepancy in the special waste manifest and the special waste received, the operator of the special waste receiving facility shall:
1. Contact the generator and special waste shipper to attempt to reconcile the discrepancy.
 2. If the discrepancy cannot be resolved within 15 days after receiving the waste, submit a letter to the Director, along with the special waste manifest within five days. The letter shall describe the significant manifest discrepancy and all attempts to reconcile it.

Historical Note

Section recodified from A.A.C. R18-8-304, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

R18-13-1305. Records

All records required by this Article shall be retained for at least three years. If notification of an enforcement action by the Department has been received, the records shall be retained until a final determination has been made in the matter or in accordance with the final determination.

Historical Note

Section recodified from A.A.C. R18-8-305, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

R18-13-1306. Reserved**R18-13-1307. Best Management Practices for Waste from Shredding Motor Vehicles**

- A. A generator of shredder residue shall follow sampling protocol as follows or submit to the Department for review and approval, at least two weeks prior to the sampling event, an alternative written sampling plan which is consistent with requirements set forth in "Test Methods for Evaluating Solid Waste," EPA SW-846, 3rd Edition, Volume II, Chapter Nine, Sampling Plan, Physical/Chemical Method, EPA, Office of Solid Waste and Emergency Response, Washington, D.C., September 1986, and updated November 1990, and no future editions or amendments, ("EPA Sampling Plan"), herein incorporated by reference and on file with the Department and the Office of the Secretary of State:
1. Sample collection shall be done in accordance with one of the following:
 - a. Sampling procedure 1, consisting of both of the following steps:
 - i. The generator shall collect samples from a shredder residue sampling pile which shall consist of the average amount of shredder residue from eight hours of operation of the shredder. The shredder residue sampling pile shall be formed into a square shape for sampling purposes. Refer to Exhibit 1.
 - ii. One 2,000-gram sample shall be collected from each sample point as indicated in Exhibit 1. Samples from sample points A-1, B-1, and C-1 shall be collected from the top of the pile. Samples from sample points A-2, B-2, and C-2 shall be collected from the base of the pile. A sample from sample point C-3 shall be collected at the vertical midpoint at the center of the pile. The seven 2,000-gram samples shall be numbered consecutively. Three of the seven 2,000-gram samples shall then be chosen at random by selecting numbers from a calculator programmed to generate random numbers. The samples shall be analyzed for the constituents and at the frequencies listed in Table A of this Section.
 - b. Sampling procedure 2, consisting of both of the following steps:
 - i. The generator shall collect seven 2,000-gram samples during or immediately following the normal generation of shredder residue. For each sample, shredder residue shall be collected for 8 to 12 minutes, during which a minimum of 500 pounds shall be generated. This

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- process shall be performed seven times to create seven 500-pound amounts. Each 500-pound amount shall be formed into a square shape for sampling purposes. Refer to Exhibit 1.
- ii. Twenty 100-gram samples shall be collected from throughout each of the seven 500-pound piles generated. Upon completion of collection, all 20 samples from each of the seven 500-pound piles shall be combined together into seven separate 2,000-gram samples and numbered consecutively. Three of the seven 2,000-gram samples shall then be chosen at random by selecting numbers from a calculator programmed to generate random numbers. The samples shall be analyzed for the constituents and at the frequencies listed in Table A of this Section.
2. Each 2,000 grams of shredder residue collected shall include both large and small particles, in proportion to shredder residue generated. The generator shall use a container which is large enough to hold the entire amount of shredder residue collected from each sample point.
 3. The generator shall comply with requirements for sample preservation, temperature, and holding times, as set forth in the EPA Sampling Plan.
 4. Each one of the three 2,000-gram samples selected at random shall be divided into four equal 500-gram portions and a 200-gram subsample shall be taken from each of the four equal 500-gram portions. Each subsample shall then be passed through a 9.5mm screen. All particles which do not pass through the 9.5mm screen shall be hand cut until small enough to pass through the screen. All four 200-gram subsamples shall then be remixed together and redivided into four equal 200-gram portions. The following amounts shall be taken for constituent sampling:
 - a. 10-15 grams per 200-gram subsample for a total of 40-60 grams per 2,000-gram sample for Polychlorinated Biphenyls (PCB) analysis as set forth in subsection (A)(10).
 - b. 25 grams per 200-gram subsample for a total of 100 grams per sample for toxicity characteristic leaching procedure extractions for contaminants as set forth in 40 CFR 261.24, Table 1 (incorporated by reference in R18-8-261(A)), as set forth in subsection (A)(7).
 - c. 1.25 grams per 200-gram subsample for a total of 5 grams per 2,000-gram sample for extraction fluid determination.
 5. Each constituent sample shall be put into a container. Container labeling and chain-of-custody documentation shall be consistent with the requirements in the EPA Sampling Plan.
 6. The constituent samples shall be analyzed by a laboratory licensed by the Arizona Department of Health Services in accordance with A.R.S. § 36-495.
 7. Of the three samples selected at random, one sample amount required by subsection (A)(4)(b) shall be analyzed for the extractable heavy metals arsenic, barium, cadmium, chromium, lead, mercury, selenium, and silver, as set forth in 40 CFR 261.24, Table 1. The remaining two samples shall each be analyzed for extractable cadmium and lead.
 8. If the results of all three of the analyses for any extractable heavy metal in subsection (A)(7) above are below the Regulatory Level of the Maximum Concentration of Contaminants for the Toxicity Characteristic as set forth in 40 CFR 261.24, Table 1, the simple arithmetic mean of the extractable cadmium and lead and the single analysis for the remaining six extractable heavy metals shall be used to determine if the sampled shredder residue will be classified as hazardous waste.
 9. If the analyses of any one of three selected samples exceeds the regulatory level as set forth in 40 CFR 261.24, Table 1, an additional subsample from the sample in question shall be subjected to confirmation analysis. If the confirmation sample analysis totals are in excess of the regulatory level as set forth in 40 CFR 261.24, Table 1, the remaining four of the original seven samples shall be analyzed for those extractable heavy metals which exceed the regulatory level as set forth in 40 CFR 261.24, Table 1. The simple arithmetic mean of the results of all seven samples shall be used to determine if the sampled shredder residue will be classified as hazardous waste.
 10. The three samples selected at random shall be analyzed for PCB concentration in the amounts required by subsection (A)(4)(a). If the samples contain concentrations of PCB less than 50 mg/kg, the simple arithmetic mean of the three samples shall be used for reporting to the Director. If any one of the three samples contains concentrations of PCB greater than 50 mg/kg, an additional subsample from the sample in question shall be subjected to confirmation analysis. If the PCB concentration for that sample exceeds 50 mg/kg, the remaining four of the original seven samples shall be analyzed for PCB, in amounts required by subsection (A)(4)(a), and the simple arithmetic mean of all the samples shall be used to determine if the sampled shredder residue will be classified as hazardous waste.
- B. Shredder residue determined to be hazardous waste shall be managed in accordance with A.R.S. § 49-921 et seq. and R18-8-260 et seq.
 - C. The generator shall do all of the following:
 1. Secure the facility to prevent unauthorized entry;
 2. Cover or otherwise manage the shredder residue pile to prevent wind dispersal;
 3. Place the shredder residue pile on a surface with a permeability coefficient equal to or less than 1×10^{-7} cm/s;
 4. Design, construct, operate, and maintain a run-on control system capable of preventing flow onto the waste pile during peak discharge from, at a minimum, a 25-year storm;
 5. Design, construct, operate, and maintain a run-off management system to collect and control at a minimum, the water volume resulting from a 24-hour, 25-year storm;
 6. Provide collection and holding facilities for run-on and run-off control systems, which shall have a permeability coefficient equal to or less than 1×10^{-7} cm/s;
 7. Record the date accumulation of shredder residue begins.
 - D. Shredder residue shall be treated, recycled, sorted, stored, or disposed at a Department-approved special waste facility approved in accordance with A.R.S. § 49-857. A facility which seeks to become a special waste facility shall submit a special waste management plan to the Department to ensure compliance with subsection (C) of this Section.
 - E. A generator shall not store shredder residue for longer than 90 days. A special waste facility shall not store shredder residue for longer than one year.
 - F. The owner or operator of a special waste facility shall pay, to the Department, the fees required by A.R.S. §§ 49-855(C)(2) and 49-863 as follows:
 1. \$1.49 per cubic yard of uncompacted shredder residue; or

- 2. \$3.38 per cubic yard of compacted shredder residue received; or
- 3. \$4.50 per ton; and
- 4. Not more than \$45,000 per generator site per year for shredder residue that is transported to a facility regulated by the Department for treatment, storage or disposal.

(Supp. 00-3).

G. Shredder residue which has been determined to be nonhazardous pursuant to this Section shall be transported in accordance with the requirements for transportation of garbage as set forth in R18-13-310.

Historical Note

Section recodified from A.A.C. R18-8-307, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3). Amended by final rulemaking at 18 A.A.R. 1217, effective July 1, 2012 (Supp. 12-2).

Table A. Target Analyses and Sampling Frequency

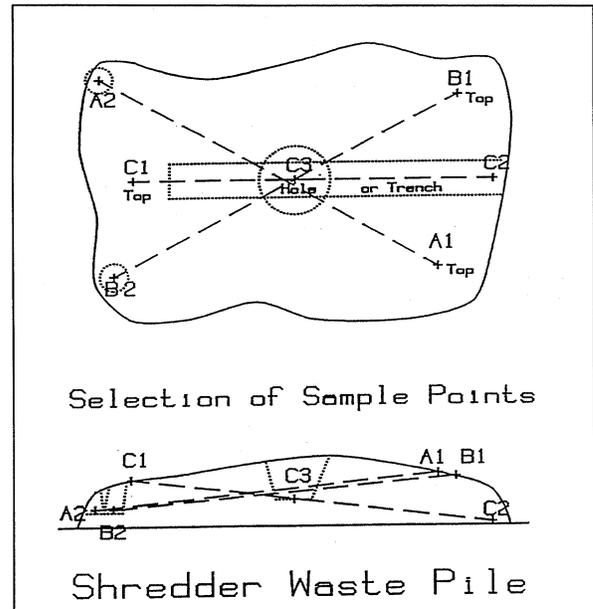
Constituents	Frequency
* TCLP Metals	Quarterly
* TCLP Volatiles	Annually
* TCLP Semi-volatiles	Annually
Polychlorinated Biphenyls (PCB)	Quarterly

* Toxicity Characteristic Leaching Procedure (TCLP)

Historical Note

Table A recodified from 18 A.A.C. 8, Article 3, filed in the Office of the Secretary of State September 29, 2000

Exhibit 1. Selection of Sample Points, Shredder Waste Pile



Historical Note

Exhibit 1 recodified from 18 A.A.C. 8, Article 3, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

Appendix A. Application for Arizona Special Waste Identification Number

Please refer to the instructions on the accompanying page before completing this form.	<h1 style="margin: 0;">ADEQ</h1>	Application for Arizona Special Waste Identification Number	Date Received: (Do not write here official use only)
1. Mark Appropriate Box: <input type="checkbox"/> Generator <input type="checkbox"/> Shipper <input type="checkbox"/> Receiving Facility <input type="checkbox"/> Multiple			
2. Company/Agency Name			
3. Company/Agency Address (Physical Address, not P.O. Box or Route Number).			
4. Company/Agency Mailing Address (If different than above).			
5. Company/Agency Contact (Person to contact regarding special waste activities). Name:			
Job Title: _____ Phone Number: () _____			
6. Company/Agency Contact Address.			
7. Name and Address of Company's/Agency's Legal Owner.			
Phone Number: () _____			
Certification: I certify under penalty of law that I have personally examined and am familiar with the information submitted in this form and that, based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of civil penalties.			
8. Signature: _____ 9. Name and Official Title: (Type or Print) _____ 10. Date Signed: _____			
11. Please list special wastes generated, transported, stored, or received by applicant.			

Instructions for the Completion of the ADEQ Application for the Arizona Special Waste Identification Number.

1. Place an "X" in the appropriate box indicating which type of operation you will be performing.
2. Enter the complete company/agency name.
3. Enter the complete address. Do not use P.O. Box or Route Number.
4. Enter the complete address if it is different than the address listed in item 3.
5. Enter the name, job title, and complete phone number of the person who will act as the company/agency contact.
6. Enter the complete address of the company/agency contact listed in item 5.
7. Enter the name, complete address, and phone number of the company's/agency's legal owner.
8. Enter the signature of the person who will assume the responsibility of completion of this form and its contents.
9. Enter the name and title of the responsible person listed in item 8.
10. Enter the date that the responsible person signed the document.
11. List all special wastes that the applicant generates, transports, stores, or receives.

Historical Note

Appendix A recodified from 18 A.A.C. 8, Article 3, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

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Appendix B. Special Waste Manifest

ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY
SPECIAL WASTE MANIFEST

G e n e r a t o r	1. Generator's AZ ID No.		Emergency Response Notification Phone Number	
	3. Generator's Name and Mailing Address			
	Generator's Phone Number and Area Code			
	4. Transporter 1 Company Name and Mailing Address		Transporter's AZ ID No.	
			Transporter's Phone No.	
	5. Transporter 2 Company Name and Mailing Address		Transporter's AZ ID No.	
			Transporter's Phone No.	
	6. Primary Receiving Facility Name and Address (physical site location, if different)		Facility's AZ ID No.	
			Facility's Phone No.	
	7. Alternate Receiving Facility Name and Address (physical site location, if different)		Facility's AZ ID No.	
		Facility's Phone No.		
8. U.S. DOT description, (if applicable) (Non-DOT regulated materials enter shipping name, physical state and description of all contents of waste)		Containers No.	Total Quantity	Unit Wt/Vol
		Mark "X" if Haz Mat		
9. Additional information on transportation, treatment, storage, or disposal				
10. GENERATOR'S CERTIFICATION: I hereby declare that the contents of this consignment are fully and accurately described above by proper shipping name and are classified, packed, marked, and labeled and are in all respects in proper condition for transport by highway according to applicable international and governmental regulations.				Date
Printed/Typed Name		Signature		
T r a n s p o r t	11. Transporter 1 Acknowledgment of Receipt of Materials			Date
	Printed/Typed Name		Signature	
	12. Transporter 2 Acknowledgment of Receipt of Materials			Date
	Printed/Typed Name		Signature	
F a c i l i t y	13. Discrepancy Indication Space			
	14. Facility Owner or Operator: Certification of receipt of special waste materials covered by this manifest except as noted in above item.			Date
	Printed/Typed Name		Signature	

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Instructions for the Completion of the ADEQ Special Waste Manifest

1. Enter the generator's Arizona Identification Number in box 1.
2. Enter the Emergency Response Notification Phone Number in box 2.
3. Enter the generator's name and complete mailing address, including city, state, and zip code, along with the generator's phone number, including the area code, in box 3.
4. Enter the transporter's name, transporter's Arizona identification number, and telephone number, including the area code, in box 4.
5. Complete this box if a second transporter is to be used to transport the special waste to the receiving facility, following the instructions outlined in number 4 in box 5.
6. Enter the name, address, and physical site location of the primary special waste receiving facility. In the appropriate spaces, include the facility's Arizona identification number and the telephone number, including the area code, in box 6.
7. Enter the name, address, and physical site location of the alternate special waste receiving facility. In the appropriate spaces, include the facility's Arizona identification number and the telephone number, including the area code, in box 7.
8. Enter United States Department of Transportation description (Including proper shipping name, hazard class, and identification number, if applicable) (For all non-Department of Transportation-regulated materials, enter the proper name, physical state, and description of all contents of the waste).

Mark an "X" in this column if waste is classified as a hazardous material.

Container Number

Enter the number of containers being shipped for each waste.

Total Quantity

Numerical value representing the number of containers multiplied by the container size. Answer will be listed in pounds, gallons, or cubic yards.

Unit weight or volume

P - Pounds

G - Gallons

Y - Cubic Yards

9. Use this space to indicate special transportation, treatment, storage, or disposal information. Emergency response telephone numbers or similar information may be included here in box 9.
10. Print or type the generator's name followed by their signature and date in box 10.
11. Print or type the primary transporter's name followed by their signature and date in box 11.
12. Print or type the secondary transporter's name followed by their signature and date in box 12.
13. Indicate significant discrepancies in this box. Significant manifest discrepancy is defined as "a difference of more than 10% by weight for bulk shipments, any variation in a piece count for batch deliveries, or an obvious difference in a special waste type is discovered by inspection or analysis between the type or amount of a special waste designated in a special waste manifest, and the type or amount received by a special waste receiving facility" in box 13.
14. Print or type the receiving facility's owner or operator name followed by their signature and date in box 14.

Historical Note

Appendix B recodified from 18 A.A.C. 8, Article 3, filed in the Office of the Secretary of State September 29, 2000 (Supp. 00-3).

ARTICLE 14. BIOHAZARDOUS MEDICAL WASTE AND DISCARDED DRUGS**R18-13-1401. Definitions**

In addition to the definitions in A.R.S. § 49-701, the following definitions apply in this Article:

1. "Administrative consent order" means a bilateral agreement between the consenting party and the Department. A bilateral agreement is not subject to administrative appeal.
2. "Alternative treatment technology" means a treatment method other than autoclaving or incineration, that achieves the treatment standards described in R18-13-1415.
3. "Approved medical waste facility plan" means the document that has been approved by the Department under A.R.S. § 49-762.04, and that authorizes the operator to accept biohazardous medical waste at its solid waste facility.
4. "Autoclaving," means using a combination of heat, steam, pressure, and time to achieve sterile conditions.
5. "Biohazardous medical waste" is composed of one or more of the following:
 - a. Cultures and stocks: Discarded cultures and stocks generated in the diagnosis, treatment or immunization of a human being or animal or in any research relating to that diagnosis, treatment or immunization, or in the production or testing of biologicals.
 - b. Human blood and blood products: Discarded products and materials containing free-flowing blood or free-flowing blood components.
 - c. Human pathologic wastes: Discarded organs and body parts removed during surgery. Human pathologic wastes do not include the head or spinal column.
 - d. Medical sharps: Discarded sharps used in animal or human patient care, medical research, or clinical lab-

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- oratories. This includes hypodermic needles; syringes; pipettes; scalpel blades; blood vials; needles attached to tubing; broken and unbroken glassware; and slides and coverslips.
- e. Research animal wastes: Animal carcasses, body parts, and bedding of animals that have been infected with agents that produce, or may produce, human infection.
6. "Biologicals" means preparations made from living organisms or their products, including vaccines, cultures, or other biological products intended for use in diagnosing, immunizing, or treating humans or animals or in research pertaining to these activities.
 7. "Biological indicator" means a representative microorganism used to evaluate treatment efficacy.
 8. "Blood and blood products" means discarded human blood and any product derived from human blood, including but not limited to blood plasma, platelets, red or white blood corpuscles, and other derived products.
 9. "C.F.R." means the Code of Federal Regulations.
 10. "Chemotherapy waste" means any discarded material that has come in contact with an agent that kills or prevents the reproduction of malignant cells.
 11. "Dedicated vehicle" means a motor vehicle or trailer that is pulled by a motor vehicle used by a transporter for the sole purpose of transporting biohazardous medical waste.
 12. "Discarded drug" means any prescription medicine, over-the-counter medicine, or controlled substance, used in the diagnosis, treatment, or immunization of a human being or animal, that the generator intends to abandon. The term does not include hazardous waste or controlled substances regulated by the United States Drug Enforcement Agency.
 13. "Disposal facility" means a municipal solid waste landfill that has been approved by the Department under A.R.S. § 49-762.04 to accept untreated biohazardous medical waste for disposal.
 14. "Facility plan" has the meaning given to it in A.R.S. § 49-701.
 15. "Free flowing" means liquid that separates readily from any portion of a biohazardous medical waste under ambient temperature and pressure.
 16. "Generator" means a person whose act or process produces biohazardous medical waste, or a discarded drug, or whose act first causes medical waste or a discarded drug to become subject to regulation.
 17. "Hazardous waste" has the meaning prescribed in A.R.S. § 49-921.
 18. "Health care worker" means, with respect to R18-13-1403(B)(5), a person who provides health care services at an off-site location that is none of the following: a residence, a facility where health care is normally provided, or a facility licensed by the Arizona Department of Health Services.
 19. "Improper disposal of biohazardous medical waste" means the disposal by a person of untreated or inadequately treated biohazardous medical waste at any place that is not approved to accept untreated biohazardous medical waste.
 20. "Independent testing laboratory" means a testing laboratory independent of oversight activities by a provider of alternative treatment technology.
 21. "Medical sharps container" means a vessel that is rigid, puncture resistant, leak proof, and equipped with a locking cap.
 22. "Medical waste," as defined in A.R.S. § 49-701, means *"any solid waste which is generated in the diagnosis, treatment or immunization of a human being or animal or in any research relating to that diagnosis, treatment or immunization, or in the production or testing of biologicals, and includes discarded drugs but does not include hazardous waste as defined in A.R.S. § 49-921 other than conditionally exempt small quantity generator waste."*
 23. "Medical waste treatment facility" or "treatment facility" means a solid waste facility approved by the Department under A.R.S. § 49-762.04 to accept and treat biohazardous medical waste from off-site generators.
 24. "Multi-purpose vehicle" means any motor vehicle operated by a health care worker, where the general purpose is the non-commercial transporting of people and the hauling of goods and supplies, but not solid waste. A multi-purpose vehicle is limited to hauling biohazardous medical waste generated off site by health workers in providing services. "Off site" for purposes of this definition means a location other than a hospital or clinic.
 25. "Off site" means a location that does not fall within the definition of "on site" contained in A.R.S. § 49-701.
 26. "Packaging" or "properly packaged" means the use of a container or a practice under R18-13-1407.
 27. "Putrescible waste" means waste materials capable of being decomposed rapidly by microorganisms.
 28. "Radioactive material" has the meaning under A.R.S. § 30-651.
 29. "Secure" means to lock out or otherwise restrict access to unauthorized personnel.
 30. "Spill" means either of the following:
 - a. Any release of biohazardous medical waste from its package while in the generator's storage area.
 - b. Any release of biohazardous medical waste from its package or the release of packaged biohazardous medical waste by the transporter at a place or site that is not a medical waste treatment or disposal facility.
 31. "Store" or "storage" means, in addition to the meaning under A.R.S. § 49-701, either of the following:
 - a. The temporary holding of properly packaged biohazardous medical waste by a generator in a designated accumulation area awaiting collection by a transporter.
 - b. The temporary holding of properly packaged biohazardous medical waste by a transporter or a treater at an approved medical waste storage facility or treatment facility.
 32. "Technology provider" means a person that manufactures, or a vendor who supplies alternative medical waste treatment technology.
 33. "Tracking document" means the written instrument that signifies acceptance of biohazardous medical waste by a transporter, or a transfer, storage, treatment, or disposal facility operator.
 34. "Transportation management plan" means the transporter's written plan consisting of both of the following:
 - a. The procedures used by the transporter to minimize the exposure to employees and the general public to biohazardous medical waste throughout the process of collecting, transporting, and handling.
 - b. The emergency procedures used by the transporter for handling spills or accidents.
 35. "Transporter" means a person engaged in the hauling of biohazardous medical waste from the point of generation

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- to a Department-approved storage facility or to a Department-approved treatment or disposal facility.
36. "Treat" or "treatment" means, with respect to the methods used to render biohazardous medical waste less infectious: incinerating, autoclaving, or using the alternative treatment technologies prescribed in this Article.
 37. "Treated medical waste" means biohazardous medical waste that has been treated and that meets the treatment standards of R18-13-1415. Treated medical waste that requires no further processing is considered solid waste.
 38. "Treater" means a person, also known as an operator, who receives solid waste facility plan approval for the purpose of operating a medical waste treatment facility to treat biohazardous medical waste that is generated off site.
 39. "Treatment certification statement" means the written document provided by either a generator who treats biohazardous medical waste on site or by a treater, to inform a solid waste disposal or recycling facility that biohazardous medical waste has been treated as prescribed in this Article, and therefore is no longer subject to regulation under this Article.
 40. "Treatment standards" mean the levels of microbial inactivation, prescribed in R18-13-1415, to be achieved for a specific type of biohazardous medical waste.
 41. "Universal biohazard symbol" or "biohazard symbol" means a representation that conforms to the design shown in 29 CFR 1910.145(f)(8)(ii) (Office of the Federal Register, National Archives and Records Administration, July 1, 1998) and which is incorporated by reference in this rule. This incorporation does not include any later amendments or editions. Copies of the incorporated material are available for inspection at the Department of Environmental Quality and the Office of the Secretary of State.
 42. "Vehicle not dedicated to the transportation of biohazardous medical waste but which is engaged in commerce" means a motor vehicle or a trailer pulled by a motor vehicle whose primary purpose is the transporting of goods that are not solid waste or biohazardous medical waste and that is used by a transporter for the temporary transportation of biohazardous medical waste.
6. A person in possession of biohazardous medical waste if the waste does not meet the treatment standards in R18-13-1415.
 7. An operator of a Department-approved disposal facility who accepts untreated biohazardous medical waste.
 8. A person who generates medical sharps in the preparation of human remains.
 9. A person who generates medical sharps in the treatment of animals.
 10. A generator of discarded drugs not returned to the manufacturer.
- B.** The requirements for biohazardous medical waste set out for collection do not apply to the manner in which the generator collects, or handles biohazardous medical waste inside the generator's place of business.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 3776, effective September 17, 1999 (Supp. 99-3).

R18-13-1403. Exemptions; Partial Exemptions**R18-13-1402. Applicability****A.** This Article applies to the following:

1. A generator who treats biohazardous medical waste on site, before disposing of it as treated medical waste, and to any equipment used for that purpose. Specific requirements for a generator who treats on site are prescribed in R18-13-1405.
 2. A generator who contracts with a medical waste treatment facility for the purpose of treating biohazardous medical waste. Specific requirements for such a generator are prescribed in R18-13-1406.
 3. A person who transports biohazardous medical waste and any motor vehicle used for that purpose.
 4. A medical waste treatment facility operator, a medical waste treatment facility, and any equipment used for medical waste treatment.
 5. A person who provides alternative medical waste treatment technology for the purpose of treatment, and to any technology used for treatment.
1. Law enforcement personnel handling biohazardous medical waste for law enforcement purposes.
 2. A person in possession of radioactive materials.
 3. A person who returns unused medical sharps to the manufacturer.
 4. A household generator residing in a private, public, or semi-public residence who generates biohazardous medical waste in the administration of self care or the agent of the household generator who administers the medical care. This exemption does not apply to the facility in which the person resides if that facility is licensed by the Arizona Department of Health Services.
 5. A generator that separates medical devices from the medical waste stream that are sent out for re-processing and returned to the generator.
 6. A person in possession of human bodies regulated by A.R.S. Title 36.
 7. A person who sends used medical sharps via the United States Postal Service or private shipping agent to a treatment facility.
- B.** The following are conditionally exempt from the requirements of this Article:
1. A person who prepares human corpses, remains, and anatomical parts that are intended for interment or cremation. However, if medical sharps are generated during the preparation of the human remains, they must be disposed of as prescribed by this Article.
 2. A person who operates an emergency rescue vehicle, an ambulance, or a blood service collection vehicle if the biohazardous medical waste is returned to the home facility for disposal. This facility is considered to be the point of generation for packaging, treatment, and disposal.
 3. A person who discharges discarded drugs and liquid and semi-liquid biohazardous medical wastes, excluding cultures and stocks, to the sanitary sewer system if the operator of the wastewater sewer system and treatment facility allows, permits, authorizes, or otherwise approves of the discharges.
 4. A person who possesses hazardous waste regulated by A.R.S. Title 49, Chapter 5.
 5. A health care worker who uses a multi-purpose vehicle in the conduct of routine business other than transporting waste, is exempt from the requirements of R18-13-1409

if the health care worker complies with all of the following:

- a. Packages the biohazardous medical waste according to R18-13-1407.
 - b. Secures the packaged biohazardous medical waste within the vehicle so as to minimize spills.
 - c. Transports the biohazardous medical waste to the place of business or to a medical waste treatment or disposal facility.
 - d. Cleans the vehicle when it shows visible signs of contamination.
 - e. Secures the vehicle to prevent unauthorized contact with the biohazardous medical waste.
6. A person who transports biohazardous medical waste between multiple properties separated by a public thoroughfare and which is owned or operated by the same owner or governmental entity is exempt from the requirements of R18-13-1409 if the person complies with R18-13-1403(B)(5)(a) through (e).
7. A hospital that chooses to accept medical sharps from staff physicians who generate medical sharps in a private practice is exempt from the requirement to obtain facility plan approval as long as the hospital collects medical sharps for off-site treatment or disposal.
- C. The following are exempt from some of the requirements of this Article:
1. A generator who treats biohazardous medical waste on site and who accepts for treatment medical waste described in R18-13-1403(A)(4) is exempt from the requirement to obtain solid waste facility plan approval prescribed in R18-13-1410.
 2. A generator who self-hauls biohazardous medical waste to a Department-approved medical waste treatment, storage, transfer, or disposal facility is exempt from the requirements of R18-13-1409 if the generator complies with R18-13-1403(B)(5)(a) through (e).

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 3776, effective September 17, 1999 (Supp. 99-3).

R18-13-1404. Transition and Compliance Dates

- A. Unless otherwise specified in subsections (B) through (H), the date for compliance with this Article by generators, transporters, treaters, providers of alternative medical waste technology, and persons in possession of untreated biohazardous medical waste is the effective date of this Article.
- B. A person who provides alternative medical waste treatment technology used by a generator before the effective date of this Article shall perform all of the following:
1. Register the alternative medical waste technology with the Department as prescribed in R18-13-1414 within 90 days after the effective date of this Article.
 2. Not provide alternative technology 90 days after the effective date of this Article unless a Departmental registration certificate is received.
 3. After receipt of the Departmental registration certificate, provide to all generators using the alternative treatment technology a copy of the registration certificate and the alternative technology manufacturer's specifications.
- C. A generator who utilizes alternative medical waste treatment technology before the effective date of this Article shall obtain, within 180 days after the effective date of this Article, the Departmental registration number and equipment specifications, described in R18-13-1414, from the technology provider. If documentation of Departmental registration is not on file with the generator, the Department shall classify biohaz-

ardous medical waste treated 180 days after the effective date of this Article using the unregistered alternative treatment technology as untreated biohazardous medical waste.

- D. A generator who utilizes incineration or autoclaving for onsite treatment of biohazardous medical waste before the effective date of this Article may continue to do so after the effective date if the treatment requirements of R18-13-1415 and the onsite treatment requirements of R18-13-1405 are met.
- E. A transporter of biohazardous medical waste in business on the effective date of this Article shall register, within 90 days after the effective date of this Article, as required in R18-13-1409(A).
- F. An operator of a medical waste storage facility, who has obtained approval for a solid waste facility under A.R.S. § 49-762.04 on or before the effective date of this Article, may continue to store biohazardous medical waste if the facility complies with the design and operation standards prescribed in R18-13-1411. The addition of a refrigeration unit is a Type II change as described in R18-13-1413(A)(2).
- G. An operator of a medical waste transfer facility shall obtain solid waste facility plan approval that meets the requirements of R18-13-1410 within 180 days after the effective date of this Article.
- H. An operator of a medical waste treatment facility who has obtained Departmental plan approval to operate a medical waste treatment facility on or before the effective date of this Article may continue to operate under that plan approval if both of the following are met:
1. The treater complies with the treatment standards of R18-13-1415 and the recordkeeping requirements of R18-13-1412, except as noted in the subsection below.
 2. If the treater determines that the waste is not being treated to the applicable treatment standards of R18-13-1415, the treater informs the Department within two working days after the date on the determination, and within 30 working days enters into an administrative consent order to bring the facility into compliance.
- I. An operator of an existing municipal solid waste landfill who intends to accept untreated biohazardous medical waste shall submit a notice of a Type III change and an amended facility plan within 180 days after the effective date of this Article.
- J. Notwithstanding subsection (H), if the Department determines that an updated solid waste facility plan is required, a treater shall submit an updated plan within 180 days after the date on the Department's determination. The treater may continue to operate under the conditions specified in subsection (H) of this Section while the Department reviews and determines whether to approve or deny the updated plan.
- K. After the effective date of this Article, solid waste facility plan approval under A.R.S. § 49-762.04 is required for a new medical waste treatment or disposal facility before construction.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 3776, effective September 17, 1999 (Supp. 99-3).

R18-13-1405. Biohazardous Medical Waste Treated On Site

- A. A person who treats biohazardous medical waste on site shall use incineration, autoclaving, or an alternative medical waste treatment method that meets the treatment standards prescribed in R18-13-1415.
- B. A generator who uses:
1. Incineration shall follow the requirements of subsections (C), (F), (G), and (H),
 2. Autoclaving shall follow the requirements of subsections (D), (F), (G) and (H), or

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3. An alternative treatment method shall follow the requirements of subsections (E), (F), (G), and (H).
- C.** A generator who incinerates biohazardous medical waste on site shall comply with all of the following requirements:
1. Obtain a permit if required by the local or state air quality agency having jurisdiction.
 2. Reduce the biohazardous medical waste, excluding metallic items, into carbonized or mineralized ash.
 3. Determine whether incinerator ash is hazardous waste as required by hazardous waste rules promulgated under A.R.S. Title 49, Chapter 5.
 4. Dispose of the non-hazardous waste incinerator ash at a Department-approved municipal solid waste landfill.
- D.** A generator who autoclaves biohazardous medical waste on site shall comply with all of the following requirements:
1. Further process by grinding, shredding, or any other process, any recognizable animals and human tissue, organs, or body parts, to render such waste non-recognizable and ensure effective treatment.
 2. Operate the autoclave at the manufacturer's specifications appropriate for the quantity and density of the load.
 3. Keep records of operational performance levels for six months after each treatment cycle. Operational performance level recordkeeping includes all of the following:
 - a. Duration of time for each treatment cycle.
 - b. The temperature and pressure maintained in the treatment unit during each cycle.
 - c. The method used to determine treatment parameters in the manufacturer's specifications.
 - d. The method in manufacturer's specifications used to confirm microbial inactivation and the test results.
 - e. Any other operating parameters in the manufacturer's specifications for each treatment cycle.
 4. Keep records of equipment maintenance for the duration of equipment use that include the date and result of all equipment calibration and maintenance.
- E.** A generator who uses an alternative treatment method on site shall comply with all of the following requirements:
1. Use only alternative treatment methods registered under R18-13-1414.
 2. Further process by grinding, shredding, or any other process, any recognizable animals and human tissue, organs, or body parts, to render this waste non-recognizable and ensure effective treatment.
 3. Follow the manufacturer's specifications for equipment operation.
 4. Supply upon request all of the following:
 - a. The Departmental registration number for the alternative medical waste treatment technology and the type of biohazardous medical waste that the equipment is registered to treat.
 - b. The equipment specifications that include all of the following:
 - i. The operating procedures for the equipment that enable the treater to comply with the treatment standards described in this Article for the type of waste treated.
 - ii. The instructions for equipment maintenance, testing, and calibration that enable the treater to comply with the treatment standards described in this Article for the type of waste treated.
 5. Maintain a training manual regarding the proper operation of the equipment.
 6. Maintain a treatment record consisting of a log of the volume of medical waste treated and a schedule of calibration and maintenance performed under the manufacturer's specifications.
 7. Maintain treatment records for six months after the treatment date for each load treated.
 8. Maintain the equipment specifications for the duration of equipment use.
- F.** A generator shall do all of the following:
1. Package the treated medical waste according to the waste collection agency's requirements;
 2. Attach to the package or container a label, placard, or tag with the following words: "This medical waste has been treated as required by the Arizona Department of Environmental Quality standards" before placing the treated medical waste out for collection as a general solid waste. The generator shall ensure that the treated medical waste meets the standards of R18-13-1415.
 3. Upon request of the solid waste collection agency or municipal solid waste landfill, provide a certification that the treated medical waste meets the standards of R18-13-1415.
 4. Make treatment records available for Departmental inspection upon request.
- G.** A generator of medical sharps shall handle medical sharps as prescribed in R18-13-1419.
- H.** A generator of chemotherapy waste, cultures and stocks, or animal waste shall handle that waste as prescribed in R18-13-1420.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 3776, effective September 17, 1999 (Supp. 99-3).

R18-13-1406. Biohazardous Medical Waste Transported Off Site for Treatment

- A.** A generator of biohazardous medical waste shall package the waste as prescribed in R18-13-1407 before self-hauling or before setting the waste out for collection by a transporter.
- B.** A generator shall obtain a copy of the tracking document signed by the transporter signifying acceptance of the biohazardous medical waste. A generator shall keep a copy of the tracking document for one year from the date of acceptance by the transporter. The tracking document shall contain all of the following information:
1. Name and address of the generator, transporter, and medical waste treatment, storage, transfer, or disposal facility, as applicable.
 2. Quantity of biohazardous medical waste collected by weight, volume, or number of containers.
 3. Identification number attached to bags or containers.
 4. Date the biohazardous medical waste is collected.
- C.** A generator of chemotherapy waste, cultures and stocks, or animal waste shall handle the waste as prescribed in R18-13-1420.
- D.** A generator of medical sharps shall handle the waste as prescribed in R18-13-1419.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 3776, effective September 17, 1999 (Supp. 99-3).

R18-13-1407. Packaging

- A.** A generator who sets biohazardous medical waste out for collection for off-site treatment or disposal shall package the biohazardous medical waste in either of the following:
1. A red disposable plastic bag that is:
 - a. Leak resistant,
 - b. Impervious to moisture,

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- c. Of sufficient strength to prevent tearing or bursting under normal conditions of use and handling,
 - d. Sealed to prevent leakage during transport,
 - e. Puncture resistant for sharps, and
 - f. Placed in a secondary container. This container shall be constructed of materials that will prevent breakage of the bag in storage and handling during collection and transportation and bear the universal biohazard symbol. The secondary container may be either disposable or reusable.
2. A reusable container that bears the universal biohazard symbol and that is:
- a. Leak-proof on all sides and bottom, closed with a fitted lid, and constructed of smooth, easily cleanable materials that are impervious to liquids and resistant to corrosion by disinfection agents and hot water, and
 - b. Used for the storage or transport of biohazardous medical waste and cleaned after each use unless the inner surfaces of the container have been protected by disposable liners, bags, or other devices removed with the waste. "Cleaning" means agitation to remove visible particles combined with one of the following:
 - i. Exposure to hot water at a temperature of at least 180 degrees Fahrenheit for a minimum of 15 seconds.
 - ii. Exposure to an EPA-approved chemical disinfectant used under established protocols and regulations.
 - iii. Any other method that the Department determines is acceptable, if the determination of acceptability is made in advance of the cleaning.
- B.** A generator shall handle any container used for the storage or transport of biohazardous medical waste that is not capable of being cleaned as described in subsection (A)(2)(b), or that is disposable packaging, as biohazardous medical waste.
- C.** A generator shall not use reusable containers described in subsection (A)(2) for any purpose other than the storage of biohazardous medical waste.
- D.** A generator shall not reuse disposable packaging and liners and shall manage such items as biohazardous medical waste.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 3776, effective September 17, 1999 (Supp. 99-3).

R18-13-1408. Storage

- A.** A generator may place a container of biohazardous medical waste alongside a container of solid waste if the biohazardous medical waste is identified and not allowed to co-mingle with the solid waste. The storage area shall not be used to store substances for human consumption or for medical supplies.
- B.** Once biohazardous medical waste has been packaged for shipment off site, a generator shall provide a storage area for biohazardous medical waste until the waste is collected and shall comply with both of the following requirements:
1. Secure the storage area in a manner that restricts access to, or contact with the biohazardous medical waste to authorized persons.
 2. Display the universal biohazard symbol and post warning signs worded as follows for medical waste storage areas: (in English) "CAUTION -- BIOHAZARDOUS MEDICAL WASTE STORAGE AREA -- UNAUTHORIZED PERSONS KEEP OUT" and (in Spanish) "PRECAUCION -- ZONA DE ALMACENAMIENTO DE DES-

PERDICIOS BIOLÓGICOS PELIGROSOS -- PROHIBIDA LA ENTRADA A PERSONAS NO AUTORIZADAS."

- C.** Beginning at the time the waste is set out for collection, a generator who stores biohazardous medical waste shall comply with all of the following requirements:
1. Keep putrescible biohazardous medical waste unrefrigerated if it does not create a nuisance. However, refrigerate at 40° F. or less putrescible biohazardous medical waste kept more than seven days.
 2. Store biohazardous medical waste for 90 days or less unless the generator has obtained facility plan approval under A.R.S. § 49-762.04 and is in compliance with the design and operational requirements prescribed in R18-13-1412.
 3. Keep the storage area free of visible contamination.
 4. Protect biohazardous medical waste from contact with water, precipitation, wind, or animals. A generator shall ensure that the waste does not provide a breeding place or a food source for insects or rodents.
 5. Handle spills by re-packaging the biohazardous medical waste, re-labeling the containers and cleaning any soiled surface as prescribed in R18-13-1407(A)(2)(b).
 6. Notwithstanding subsection (C)(1), if odors become a problem, a generator shall minimize objectionable odors and the off-site migration of odors. If the Department determines that a generator has not acted or adequately addressed the problem, the Department shall require the waste to be removed or refrigerated at 40° F or less.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 3776, effective September 17, 1999 (Supp. 99-3).

R18-13-1409. Transportation; Transporter License; Annual Fee

- A.** A transporter shall obtain a transporter license from the Department as provided under subsections (B), (C), and (D) below in addition to possessing a permit, license, or approval if required by a local health department, environmental agency, or other governmental agency with jurisdiction.
- B.** Beginning on July 1, 2012, a transporter shall pay an annual fee of \$750 for every calendar year according to the following schedule, except that no transporter shall pay more than one annual fee in any calendar year:
1. Transporters registered with the Department before July 1, 2012, shall pay by December 31st of each year until their registration expires and shall apply for a license according to subsections (C) and (D) of this Section no more than 60 days before their registration expires.
 2. Transporters who have been issued a license or renewal of a license under this Section and have paid the licensing year fee as provided in subsection (D) shall pay the annual fee by December 31st of each year thereafter.
 3. A transporter that has not been registered with the Department shall apply and obtain a license according to subsections (C) and (D) of this Section and pay an annual fee by December 31st of each year thereafter.
- C.** To apply for or to renew a transporter license, an applicant shall submit all of the following on a form approved by the Department:
1. The name, address, and telephone number of the transportation company or entity.
 2. All owners' names, addresses, and telephone numbers.
 3. All names, addresses, and telephone numbers of any agents authorized to act on behalf of the owner.

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4. A copy of either the certificate of disclosure required by A.R.S. § 49-109 or a written acknowledgment that this disclosure is not required.
 5. Photocopies or other evidence of the issuance of a permit, license, or approval if required by a local health department, environmental agency, or other governmental agency with jurisdiction.
 6. A copy of the transportation management plan that meets the requirements in subsection (I).
 7. A list identifying each dedicated vehicle.
 8. An application fee of \$2,000 which shall apply toward the licensing year fee in subsection (D)(3).
- D.** The Department may only issue a transporter license, including a renewal, after all of the following:
1. All of the items in subsection (C) have been received and determined to be correct and complete;
 2. A Department inspection of each transporting vehicle shows that the vehicle is in compliance with this Article; and
 3. The applicant has paid a licensing year fee consisting of:
 - a. An amount based on the expenses associated with inspecting each transporting vehicle, evaluating the application, and approving the license, minus the application fee. The amount shall be calculated using a rate of \$122 per hour, multiplied by the number of personnel hours used in these duties.
 - b. The annual fee of \$750 for the year as provided for in subsection (B).
 - c. The maximum fee for both subsections (D)(3)(a) and (b) shall be \$20,000.
- E.** A transporter license is valid for five years after issuance. To renew the license, the licensee shall submit an application under subsection (C) no later than 60 days before expiration. Renewals shall be issued after payment of a licensing year fee as provided in subsection (D)(3).
- F.** Amendments. After issuance, the licensee shall submit to the Department any change to the information listed in subsection (C) within 30 days of its occurrence. Vehicles may only be added to the license after a Department inspection shows that the vehicle is in compliance with this Article. Amendments to the transportation management plan or amendments adding vehicles shall be processed after payment of inspection fees and other expenses at the rate listed in subsection (D)(3), except that the application fee shall be \$100 and the maximum fee \$5,000.
- G.** An applicant who disagrees with the final bill received from the Department for the amendment, issuance, renewal or denial of a transporter license or vehicle inspections may make a written request to the Director for a review of the bill and may pay the bill under protest. The request for review shall specify the matters in dispute and shall be received by the Department within 10 working days of the date of receipt of the final bill.
- H.** Unless the Department and applicant agree otherwise, the review shall take place within 30 days of receipt by the Department of the request. The Director shall make a final decision as to whether the time and costs billed are correct and reasonable. The final decision shall be mailed to the applicant within 10 working days after the date of the review and is subject to appeal pursuant to A.R.S. § 49-769.
- I.** A person who transports biohazardous medical waste shall maintain in each transporting vehicle at all times a transportation management plan consisting of both of the following:
1. Routine procedures used to minimize the exposure of employees and the general public to biohazardous medical waste throughout the process of collecting, transporting, and handling.
 2. Emergency procedures used for handling spills or accidents.
- J.** A transporter who accepts biohazardous medical waste from a generator shall leave a copy of the tracking document described in R18-13-1406(B) with the person from whom the waste is accepted. A transporter shall ensure that a copy of the tracking document accompanies the person who has physical possession of the biohazardous medical waste. Upon delivery to a Department-approved transfer, storage, treatment, or disposal facility, the transporter shall obtain a copy of the tracking document, signed by a person representing the receiving facility, signifying acceptance of the biohazardous medical waste.
- K.** A transporter who transports biohazardous medical waste in a vehicle dedicated to the transportation of biohazardous medical waste shall ensure that the cargo compartment can be secured to limit access to authorized persons at all times except during loading and unloading. In addition, the cargo compartment shall be constructed in compliance with one of the following:
1. Have a fully enclosed, leak-proof cargo compartment consisting of a floor, sides, and a roof that are made of a non-porous material impervious to biohazardous medical waste and physically separated from the driver's compartment.
 2. Haul a fully enclosed, leak-proof cargo box made of a non-porous material impervious to biohazardous medical waste.
 3. Tow a fully enclosed leak-proof trailer made of a non-porous material impervious to biohazardous medical waste.
- L.** A person who transports biohazardous medical waste in a vehicle not dedicated to the transportation of biohazardous medical waste, but that is used longer than 30 consecutive days, shall comply with the following:
1. Subsections (A) and (I) through (M).
 2. Clean the vehicle as prescribed in R18-13-1407(A)(2)(b) before it is used for another purpose.
- M.** A person who transports biohazardous medical waste shall comply with all of the following:
1. Accept only biohazardous medical waste packaged as prescribed in R18-13-1407.
 2. Accept biohazardous medical waste only after providing the generator with a signed tracking form as prescribed in R18-13-1406(B), and keep a copy of the tracking document for one year.
 3. Deliver biohazardous medical waste to a Department-approved biohazardous medical waste storage, transfer, treatment, or disposal facility within 24 hours of collection or refrigerate the waste for not more than 90 days at 40° F or less until delivery.
 4. Not hold biohazardous medical waste longer than 96 hours in a refrigerated vehicle unless the vehicle is parked at a Department-approved facility.
 5. Not unload, reload, or transfer the biohazardous medical waste to another vehicle in any location other than a Department-approved facility, except in emergency situations. Combination vehicles or trailers may be uncoupled and coupled to another cargo vehicle or truck trailer as long as the biohazardous medical waste is not removed from the cargo compartment.
- N.** As used in this Section, "licensing year" means the calendar year in which the Department issues a license or a renewal of a license under this Section.

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Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 3776, effective September 17, 1999 (Supp. 99-3).
Amended by final rulemaking at 18 A.A.R. 1217, effective July 1, 2012 (Supp. 12-2).

R18-13-1410. Storage, Transfer, Treatment, and Disposal Facilities; Facility Plan Approval

- A.** A person shall obtain solid waste facility plan approval from the Department as prescribed in A.R.S. § 49-762.04 to construct any facility that will be used to store, transfer, treat, or dispose of biohazardous medical waste that was generated off site. Plan approval shall be obtained before starting construction of the medical waste treatment or disposal facility. This requirement also applies to solid waste facilities for which an operator self-certifies under A.R.S. § 49-762.05, if the facility also will receive biohazardous medical waste.
- B.** If an air quality permit is required for the facility under A.R.S. Title 49, Chapter 3, the person shall include evidence of that air quality permit, or evidence of an air quality permit application with the application for solid waste facility plan approval.
- C.** A person applying for facility plan approval shall ensure that the plan contains information demonstrating how the plan will comply with this Article.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 3776, effective September 17, 1999 (Supp. 99-3).

R18-13-1411. Storage and Transfer Facilities; Design and Operation

An operator of a storage facility or transfer facility shall comply with all of the following design and operation requirements:

1. Design the facility so that biohazardous medical waste is always handled and stored separately from other types of solid waste if accepted at the facility.
2. Display prominently the universal biohazard symbol as prescribed in R18-13-1401.
3. Construct the storage area from smooth, easily cleanable non-porous material that is impervious to liquids and resistant to corrosion by disinfecting agents and hot water.
4. Protect biohazardous medical waste from contact with water, precipitation, wind, or animals.
5. Specify in the application for facility plan approval the maximum storage time that biohazardous medical waste will remain at the facility. If the biohazardous medical waste will be stored for more than 24 hours, the operator shall equip the facility with a refrigerator to refrigerate the biohazardous medical waste. The operator of the facility shall maintain the temperature in the refrigerator at 40° F. or less.
6. Accept biohazardous medical waste only if it is accompanied by the tracking form. The operator shall sign the tracking form and keep a copy of the acceptance documentation for one year;
7. Accept biohazardous medical waste if it is packaged as described in R18-13-1407. If a biohazardous medical waste container is damaged or leaking, improperly labeled, or otherwise unacceptable, a transfer facility operator shall do one of the following:
 - a. Reject the waste and return it to the transporter.
 - b. Accept the waste and immediately repackage it as prescribed in R18-13-1407(A).
8. Clean the storage area daily as prescribed in R18-13-1407(A)(2).

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 3776, effective September 17, 1999 (Supp. 99-3).

R18-13-1412. Treatment Facilities; Design and Operation

- A.** An operator who applies for facility plan approval shall comply with all of the following:
1. Submit to the Department the following documentation:
 - a. Equipment specifications that identify the proper type of medical waste to be treated in the equipment and any design or equipment restrictions.
 - b. Manufacturer's specifications and operating procedures for the equipment that describe the type and volume of waste to be treated, monitoring data of the treatment process, and calibration and testing of the equipment, providing specific details about the capability of the equipment to achieve the treatment standards prescribed in R18-13-1415.
 - c. Instructions for equipment maintenance, testing, and calibration that ensure the equipment achieves the treatment standards prescribed in R18-13-1415.
 - d. Training manual for the equipment.
 - e. Written certification from the manufacturer stating that the equipment, when operated properly, is capable of achieving the treatment standards prescribed in R18-13-1415.
 2. Submit to the Department and have readily available at the facility, an operations procedure manual describing how the waste will be handled from the time it is accepted by the treater through the treatment process and final disposition of the treated waste. The operations procedure manual shall include all of the following:
 - a. Provisions for treating biohazardous medical waste within 24 hours of receipt or refrigerating immediately at 40° F. or less upon determination that treatment or disposal will not occur within 24 hours.
 - b. A contingency plan if the treatment equipment is out of service for an extended period of time. The plan shall address the manner and length of time for storage of the waste. An operator shall not store biohazardous medical waste more than 90 days. The plan shall be based on the capacity of the treatment equipment to treat all waste at the facility, including any backlog of stored waste and any new waste intake. If the 90-day time-frame will be exceeded, the operator shall either stop accepting waste until the backlog is treated, or contract with another treatment facility for treating the waste.
 - c. Procedures for handling hazardous chemicals, radioactive waste, and chemotherapy waste. The plan shall provide for scanning biohazardous medical waste with a Geiger counter and handling waste that measures above background level in a manner that complies with state and federal law.
 3. Have on hand written procedures stating that biohazardous medical waste is to be accepted from a transporter only if the waste is accompanied by a tracking form, and written procedures that require compliance with both of the following:
 - a. The treater or the treater's authorized agent shall sign the tracking document and keep a copy of the acceptance documentation for one year.
 - b. If a biohazardous medical waste container is damaged or leaking, improperly labeled, or otherwise unacceptable, a treater shall do one of the following:
 - i. Reject the waste and return it to the transporter.

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- ii. Accept the waste and transfer it directly from the transporting vehicle to the treatment processing unit.
 - iii. If the waste will not be treated immediately, repackage the waste for storage.
4. Assure that the facility is designed to meet both of the following requirements:
 - a. Any floor or wall surface in the processing area of the facility which may come into contact with bio-hazardous medical waste is constructed of a smooth, easily cleanable non-porous material that is impervious to liquids.
 - b. The floor surface in the treatment and storage area either has a curb of sufficient height to contain spills or slopes to a drain that connects to an approved sanitary sewage system, septic tank system, or collection device.
 5. Store biohazardous medical waste as required in R18-13-1408.
 6. Comply with all of the following if the treatment method is incineration:
 - a. Reduce the incinerated medical waste, excluding metallic items, into carbonized or mineralized ash by incineration.
 - b. Determine whether the ash is hazardous waste as required under R18-8-262.
 7. Conduct any autoclaving according to the manufacturer's specifications for the unit.
 8. Use only alternative medical waste treatment methods that achieve the treatment standards in R18-13-1415(A).
 9. Treat animal waste, chemotherapy waste, and cultures and stocks as prescribed in R18-13-1420.
 10. Treat medical sharps as prescribed in R18-13-1419.
 11. Keep records of equipment maintenance and operational performance levels for three years. The records shall include the date and result of all equipment calibration and maintenance. Operational performance level records shall indicate the duration of time for each treatment cycle and:
 - a. For steam treatment and microwaving treatment records, both the temperature and pressure maintained in the treatment unit during each cycle and the method used for confirmation of temperature and pressure.
 - b. For chemical treatment, a description of the solution used.
 - c. For incineration, the temperature maintained in the treatment unit during operation.
 - d. Any other operating parameters in the manufacturer's specifications.
 - e. A description of the treatment method used and a copy of the maintenance test results.
 12. Not open the red bag prior to treatment unless opening the bag is required to treat the contents. Transfer of the entire contents, when performed as part of the treatment process, is permitted.
- B.** The treater shall make treatment records available for Departmental inspection upon request.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 3776, effective September 17, 1999 (Supp. 99-3).

R18-13-1413. Changes to Approved Medical Waste Facility Plans

- A.** As required by A.R.S. § 49-762.06, before making any change to an approved facility plan a treatment facility owner or oper-

ator shall submit a notice to the Department stating which of the following categories of change is requested:

1. A Type I change to an approved medical waste facility plan is a change not described in subsection (A)(2), (3), or (4).
 2. A Type II change to an approved medical waste facility plan is a change in which treatment equipment is replaced with equal or like equipment, resulting in either no increase to treatment capacity or the addition of equipment that is not directly used in the treatment process.
 3. A Type III change to an approved medical waste facility plan is a change described by one of the following:
 - a. Treatment equipment is added, resulting in less than a 25% increase in treatment capacity.
 - b. The storage area is enlarged resulting in less than a 25% increase in storage capacity.
 - c. Treatment technology is changed.
 4. A Type IV change to an approved medical waste facility plan is a change described by one of the following:
 - a. Treatment equipment is added, resulting in a 25% or more increase in treatment capacity.
 - b. The storage area is enlarged resulting in a 25% or more increase in storage capacity.
 - c. Treatment equipment is added that requires an environmental permit.
 - d. An expansion of the treatment facility onto land not previously described in the approved plan.
- B.** As required by A.R.S. § 49-762.06, a treatment facility operator who has identified a change under subsection (A) shall comply with one of the following:
1. For a Type I change, make the change without notice to, or approval by the Department.
 2. For a Type II change, before making any change, provide written notification that describes the change to the Department. The addition of refrigeration units only for compliance with this Article is a Type II change for which no Departmental approval is required.
 3. For a Type III or Type IV change, submit an amended plan to the Department for approval before making any change. Departmental approval is required prior to making any change.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 3776, effective September 17, 1999 (Supp. 99-3).

R18-13-1414. Alternative Medical Waste Treatment Methods: Registration and Equipment Specifications

- A.** A manufacturer or its agent who applies for alternative medical waste treatment method registration shall submit to the Department all of the following:
1. The manufacturer or company name and address.
 2. The name, address, and telephone number of the person who submits the application.
 3. A description of the alternative medical waste treatment method.
 4. A list of any other states in which the treatment method is used, including a copy of any state approvals.
 5. A description of by-products generated as result of the alternative treatment method.
 6. A certification statement that the contents of the application are true and accurate to the knowledge and belief of the applicant.
 7. Written documentation demonstrating that the alternative medical waste treatment method is capable of compliance with the treatment standards in this Article for the type of waste treated. The manufacturer shall employ a labora-

tory independent of any oversight activities by the manufacturer to provide this analysis.

8. The manufacturer's equipment specifications for the alternative medical waste treatment method being registered, including all of the following:
 - a. Unit model number, or serial number.
 - b. Equipment specifications that identify the proper type of biohazardous medical waste to be treated by the equipment and any design or equipment restrictions.
 - c. Operating procedures for the equipment that ensure the equipment complies with the treatment standards prescribed in this Article for the type of waste treated.
 - d. Instructions for equipment maintenance, testing, and calibration that ensure the equipment complies with the treatment standards prescribed in this Article for the type of waste treated.
 9. Written documentation of registration if required by A.R.S. § 3-351.
- B.** The Department shall make a determination whether to approve the registration application. If the Department approves the application, it shall issue to the applicant a certification of registration containing an alternative medical waste treatment method registration number. Only an alternative technology method with a valid Department issued registration number meets the requirements of this Article.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 3776, effective September 17, 1999 (Supp. 99-3).

R18-13-1415. Treatment Standards, Quantification of Microbial Inactivation and Efficacy Testing Protocols

- A.** A treater using an alternative treatment technology shall ensure that treatment achieves either of the following treatment standards:
1. A 6 log₁₀ inactivation in the concentration of vegetative microorganisms.
 2. A 4 log₁₀ inactivation in the concentration of *Bacillus stearothermophilus* or *Bacillus subtilis* as is appropriate to the technology.
- B.** A treater utilizing an alternative treatment method shall conduct efficacy studies to demonstrate that the treatment mechanisms are capable of achieving the standards in subsection (A) through either of the following:
1. Mycobacterial species used as indicators of vegetative microorganisms:
 - a. *Mycobacterium phlei*, or
 - b. *Mycobacterium bovis* (BOG) (ATCC 35743)
 2. Spore suspensions of one of the following two bacterial species, as appropriate to the technology, used as biological indicators in efficacy tests of thermal, chemical, and irradiation treatment systems. Studies shall demonstrate a 4 log₁₀ reduction in the concentration of viable spores, through the use of an initial inoculum suspension of 5 log₁₀ or greater of:
 - a. *Bacillus stearothermophilus* (ATCC 7953), or
 - b. *Bacillus subtilis* (ATCC 19659).
- C.** A treater utilizing an alternative treatment method shall quantify microbial inactivation as follows:
1. Microbial inactivation, or "kill" efficacy is equated to "Log₁₀ Kill" that is defined as the difference between the logarithms of the number of viable test microorganisms before and after treatment. This definition is stated as:

$$\text{Log}_{10}\text{Kill} = \text{Log}_{10}(\text{cfu/g "I"}) - \text{Log}_{10}(\text{cfu/g "R"})$$
 where:

Log₁₀Kill is equivalent to the term Log₁₀ reduction, "I" is the number of viable test microorganisms introduced into the treatment unit, "R" is the number of viable test microorganisms recovered from the treatment unit, and "cfu/g" are colony forming units per gram of waste solids.

2. For those treatment processes that can maintain the integrity of the biological indicator carrier of the desired microbiological test strain, biological indicators of the required strain and concentration may be used to demonstrate microbial inactivation. Quantification is evaluated by growth or no growth of the cultured biological indicator.
3. For those treatment mechanisms that cannot ensure or provide integrity of the biological indicator, quantitative measurement of microbial inactivation requires a two-step approach: Step 1 "Control" and Step 2 "Test". The purpose of Step 1 is to account for the reduction of test microorganisms due to loss by dilution or physical entrapment.
 - a. Step 1:
 - i. Use microbial cultures of a predetermined concentration necessary to ensure a sufficient microbial recovery at the end of this step.
 - ii. Add suspension to a standardized medical waste load that is to be processed under normal operating conditions without the addition of the treatment agent (that is, heat, chemicals).
 - iii. Collect and wash waste samples after processing to recover the biological indicator organisms in the sample.
 - iv. Plate the recovered microorganism suspensions to quantify microbial recovery. The number of viable microorganisms recovered serves as a baseline quantity for comparison to the number of recovered microorganisms from wastes processed with the treatment agent.
 - v. The required number of recovered viable indicator microorganisms from Step 1 must be equal to or greater than the number of microorganisms required to demonstrate the prescribed Log reduction, either a 6 Log₁₀ reduction for vegetative microorganisms or a 4 Log₁₀ reduction for bacterial spores. This can be defined by the following equation:

$$\text{Log}_{10}\text{RC} = \text{Log}_{10}\text{IC} - \text{Log}_{10}\text{NR}$$
 or

$$\text{Log}_{10}\text{NR} = \text{Log}_{10}\text{IC} - \text{Log}_{10}\text{RC}$$
 where:

Log₁₀RC is greater than 6 for vegetative microorganisms and greater than 4 for bacterial spores and where:

Log₁₀RC is the number of viable "control" microorganisms in colony forming units per gram of waste solids recovered in the non-treated, processed waste residue;

Log₁₀IC is the number of viable "control" microorganisms in colony forming units per gram of waste solids introduced into the treatment unit;

Log₁₀NR is the number of "control" microorganisms in colony forming units per gram of waste solids which were not recovered in the non-treated, processed waste residue. Log₁₀NR

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represents an accountability factor for microbial loss.

- b. Step 2:
- i. Use microbial cultures of the same concentration as in Step 1.
 - ii. Add suspension to the standardized medical waste load that is to be processed under normal operating conditions with the addition of the treatment agent.
 - iii. Collect and wash waste samples after processing to recover the biological indicator organisms in the sample.
 - iv. Plate recovered microorganism suspensions to quantify microbial recovery.
 - v. From data collected from Step 1 and Step 2, the level of microbial inactivation, "Log₁₀ Kill", is calculated by employing the following equation:

$$\text{Log}_{10}\text{Kill} = \text{Log}_{10}\text{IT} - \text{Log}_{10}\text{NR} - \text{Log}_{10}\text{RT}$$
 where:
 Log₁₀Kill is equivalent to the term Log₁₀ reduction;
 Log₁₀IT is the number of viable "Test" microorganisms in colony forming units per gram of waste solids introduced into the treatment unit.

$$\text{Log}_{10}\text{IT} = \text{Log}_{10}\text{IC};$$

 Log₁₀NR is the number of "Control" microorganisms in colony forming units per gram of waste solids which were not recovered in the non-treated, processed waste residue;
 Log₁₀RT is the number of viable "Test" microorganisms in colony forming units per gram of waste solids recovered in treated, processed waste residue.
- D. A treater shall employ the appropriate methodology to determine efficacy of the treatment technology following the protocols in subsection (C) that are congruent with the treatment method.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 3776, effective September 17, 1999 (Supp. 99-3).

R18-13-1416. Recycled Materials

- A. Once a generator places biohazardous medical waste in a red bag as required in R18-13-1407, a person shall not remove any of the biohazardous medical waste from the bag until the biohazardous medical waste has been treated as required in R18-13-1415.
- B. A generator of biohazardous medical waste intending to recycle any portion of the biohazardous medical waste shall segregate that portion of biohazardous medical waste from the portion of biohazardous medical waste that will not be recycled. The generator shall do either of the following:
1. Treat the biohazardous medical waste intended for recycling as required in R18-13-1415 before sending the treated medical waste to a recycler.
 2. Follow the requirements in R18-13-1406, R18-13-1407, and R18-13-1408, before either contracting with a transporter to haul or self-hauling the biohazardous medical waste to a treatment facility for treatment. After treatment, the treated medical waste may be sent to a recycler.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 3776, effective September 17, 1999 (Supp. 99-3).

R18-13-1417. Disposal Facilities: Operation

An operator of a municipal solid waste landfill that accepts untreated biohazardous medical waste shall comply with all the following in design and operational requirements:

1. Accept biohazardous medical waste only if packaged according to R18-13-1407.
2. Keep the biohazardous medical waste disposal area separate from the general purpose disposal area.
3. Clearly label the biohazardous medical waste disposal area, informing persons that the disposal area contains untreated medical waste.
4. Not drive directly over deposited medical waste. The operator shall achieve compaction by first spreading a layer of soil that is sufficiently thick to prevent compaction equipment from coming into direct contact with the waste, or dragging waste over the area.
5. Cover the biohazardous medical waste with 6 inches of compacted soil at the end of the working day or more often as necessary to prevent vector breeding and odors.
6. Not allow salvaging of untreated biohazardous medical waste from the landfill.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 3776, effective September 17, 1999 (Supp. 99-3).

R18-13-1418. Discarded Drugs

- A. A generator of discarded drugs not returned to the manufacturer shall destroy the drugs on site prior to placing the waste out for collection. A generator shall destroy the discarded drugs by any method that prevents the drug's use. If federal or state law prescribes a specific method for destruction of discarded drugs, the generator shall comply with that law.
- B. A generator of discarded drugs may flush them down a sanitary sewer if allowed by the wastewater treatment authority.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 3776, effective September 17, 1999 (Supp. 99-3).

R18-13-1419. Medical Sharps

Medical sharps shall be handled as follows:

1. A generator who treats biohazardous medical waste on site shall place medical sharps in a sharps container after rendering them incapable of creating a stick hazard by using an encapsulation agent or any other process that prevents a stick hazard. Medical sharps encapsulated or processed in this manner are considered to be solid waste.
2. A generator who ships biohazardous medical waste off site for treatment shall either:
 - a. Place medical sharps in a medical sharps container and follow the requirements of R18-13-1406, or
 - b. Package and send medical sharps to a treatment facility via a mail-back system as prescribed by the instructions provided by the mail-back system operator. An Arizona treatment facility shall render medical sharps incapable of creating a stick hazard by using an encapsulation agent or any other process that prevents a stick hazard.
3. A person operating a treatment facility who accepts medical sharps for treatment shall either:
 - a. Encapsulate medical sharps to prevent stick hazard, or
 - b. Use any other process that prevents a stick hazard.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 3776, effective September 17, 1999 (Supp. 99-3).

R18-13-1420. Additional Handling Requirements for Certain

Wastes

- A.** A person who treats the following biohazardous medical waste categories shall meet the following additional requirements:
1. Cultures and stocks shall be incinerated, autoclaved, or treated by an alternative medical waste treatment method that meets the treatment standards set forth in R18-13-1415(A) and packaged inside a watertight primary container with absorbent packing materials if shipped off site for treatment or disposal. The primary container shall be placed inside a secondary inner container that is then placed inside an outer container. If federal or state law prescribes specific requirements for packaging and transporting this waste, the treater shall comply with that law.
 2. Chemotherapy waste shall be incinerated or disposed of in either an approved solid waste or hazardous waste disposal facility.
 3. Experimental or research animal waste shall be handled as follows:
 - a. Autoclave bedding on site or package as described in R18-13-1407 for off-site treatment or landfilling.
 - b. Incinerate animal carcasses on site, or if taken off site for treatment, comply with one of the following requirements:
 - i. Package the waste in a leakproof, covered container, label the contents and send to an incinerator or a Department-approved landfill, or
 - ii. If treated by a method other than incineration, pre-process by grinding, then treat by a method that achieves the standards of R18-13-1415(A).
- B.** If a treater uses grinding in combination with another treatment method described in this Article, the treater shall conduct it in a closed system to prevent humans from being exposed to the release of the waste into the environment. If grinding is used for medical sharps, the grinding shall render the medical sharps incapable of creating a stick hazard.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 3776, effective September 17, 1999 (Supp. 99-3).

ARTICLE 15. RECODIFIED

Editor's Note: The recodification at 7 A.A.R. 2522 described below erroneously moved Sections into 18 A.A.C. 9, Article 9. Those Sections were actually recodified to 18 A.A.C. 9, Article 10. See the Historical Notes for more information (Supp. 01-4).

Article 15, consisting of Sections R18-13-1501 through R18-13-1514 and Appendix A, recodified to 18 A.A.C. 9, Article 9 at 7 A.A.R. 2522, effective May 24, 2001 (Supp. 01-2).

R18-13-1501. Recodified**Historical Note**

Adopted effective April 23, 1996 (Supp. 96-2). Section recodified to R18-9-902 at 7 A.A.R. 2522, effective May 24, 2001 (Supp. 01-2). Previous note correction: Section actually recodified to R18-9-1002 (Supp. 01-4).

R18-13-1502. Recodified**Historical Note**

Adopted effective April 23, 1996 (Supp. 96-2). Section recodified to R18-9-901 at 7 A.A.R. 2522, effective May 24, 2001 (Supp. 01-2). Previous note correction: Section actually recodified to R18-9-1001 (Supp. 01-4).

R18-13-1503. Recodified**Historical Note**

Adopted effective April 23, 1996 (Supp. 96-2). Section

recodified to R18-9-903 at 7 A.A.R. 2522, effective May 24, 2001 (Supp. 01-2). Previous note correction: Section actually recodified to R18-9-1003 (Supp. 01-4).

R18-13-1504. Recodified**Historical Note**

Adopted effective April 23, 1996 (Supp. 96-2). Section recodified to R18-9-904 at 7 A.A.R. 2522, effective May 24, 2001 (Supp. 01-2). Previous note correction: Section actually recodified to R18-9-1004 (Supp. 01-4).

R18-13-1505. Recodified**Historical Note**

Adopted effective April 23, 1996 (Supp. 96-2). Section recodified to R18-9-905 at 7 A.A.R. 2522, effective May 24, 2001 (Supp. 01-2). Previous note correction: Section actually recodified to R18-9-1005 (Supp. 01-4).

R18-13-1506. Recodified**Historical Note**

Adopted effective April 23, 1996 (Supp. 96-2). Section recodified to R18-9-906 at 7 A.A.R. 2522, effective May 24, 2001 (Supp. 01-2). Previous note correction: Section actually recodified to R18-9-1006 (Supp. 01-4).

R18-13-1507. Recodified**Historical Note**

Adopted effective April 23, 1996 (Supp. 96-2). Section recodified to R18-9-907 at 7 A.A.R. 2522, effective May 24, 2001 (Supp. 01-2). Previous note correction: Section actually recodified to R18-9-1007 (Supp. 01-4).

R18-13-1508. Recodified**Historical Note**

Adopted effective April 23, 1996 (Supp. 96-2). Section recodified to R18-9-908 at 7 A.A.R. 2522, effective May 24, 2001 (Supp. 01-2). Previous note correction: Section actually recodified to R18-9-1008 (Supp. 01-4).

R18-13-1509. Recodified**Historical Note**

Adopted effective April 23, 1996 (Supp. 96-2). Section recodified to R18-9-909 at 7 A.A.R. 2522, effective May 24, 2001 (Supp. 01-2). Previous note correction: Section actually recodified to R18-9-1009 (Supp. 01-4).

R18-13-1510. Recodified**Historical Note**

Adopted effective April 23, 1996 (Supp. 96-2). Section recodified to R18-9-910 at 7 A.A.R. 2522, effective May 24, 2001 (Supp. 01-2). Previous note correction: Section actually recodified to R18-9-1010 (Supp. 01-4).

R18-13-1511. Recodified**Historical Note**

Adopted effective April 23, 1996 (Supp. 96-2). Section recodified to R18-9-911 at 7 A.A.R. 2522, effective May 24, 2001 (Supp. 01-2). Previous note correction: Section actually recodified to R18-9-1011 (Supp. 01-4).

R18-13-1512. Recodified**Historical Note**

Adopted effective April 23, 1996 (Supp. 96-2). Section recodified to R18-9-912 at 7 A.A.R. 2522, effective May 24, 2001 (Supp. 01-2). Previous note correction: Section

actually recodified to R18-9-1012 (Supp. 01-4).

R18-13-1513. Recodified

Historical Note

Adopted effective April 23, 1996 (Supp. 96-2). Section recodified to R18-9-913 at 7 A.A.R. 2522, effective May 24, 2001 (Supp. 01-2). Previous note correction: Section actually recodified to R18-9-1013 (Supp. 01-4).

R18-13-1514. Recodified

Historical Note

Adopted effective April 23, 1996 (Supp. 96-2). Section recodified to R18-9-914 at 7 A.A.R. 2522, effective May 24, 2001 (Supp. 01-2). Previous note correction: Section actually recodified to R18-9-1014 (Supp. 01-4).

Appendix A. Recodified

Historical Note

Appendix A, "Procedures to Determine Annual Biosolids Application Rates", adopted effective April 23, 1996 (Supp. 96-2). Appendix A recodified to 18 A.A.C. 9, Article 9 at 7 A.A.R. 2522, effective May 24, 2001 (Supp. 01-2). Previous note correction: Section actually recodified to 18 A.A.C. 9, Article 10 (Supp. 01-4).

ARTICLE 16. BEST MANAGEMENT PRACTICES FOR PETROLEUM CONTAMINATED SOIL

Article 16, consisting of Sections R18-13-1601 through R18-13-1614, recodified from 18 A.A.C. 8, Article 16 at 8 A.A.R. 5172, effective November 27, 2002; Section and subsection citations within this Article were also updated under A.R.S. § 41-1011(C) (Supp. 02-4).

R18-13-1601. Definitions

In addition to definitions in A.R.S. § 49-851 and A.A.C. R18-13-1301, the terms in this Article shall have the following meanings:

1. "Accumulation site" means an area or site at which PCS from one or more points of generation under the control of the generator of PCS is accumulated for more than 12 hours but less than 90 days prior to treatment, storage, or disposal.
2. "Containment system" means a system designed to contain an accumulation of special waste which meets the design and performance standards in R18-13-1608 and either R18-13-1609 or R18-13-1611.
3. "Excavated" means removed from the earth by scraping or digging a hole or cavity in the earth's surface or otherwise removed from the earth's surface.
4. "Facility" or "special waste receiving facility" means a treatment facility, storage facility, or disposal facility which has been approved by the Director in accordance with A.R.S. § 49-857 or has qualified for Interim Use Facility status pursuant to A.R.S. § 49-858.
5. "Hazardous waste" means hazardous waste as defined in A.R.S. § 49-921(5).
6. "Non-fuel, non-solvent petroleum product" means a petroleum-based substance refined from virgin crude oil that is not used as a solvent or fuel including mineral oils and hydraulic oils.
7. "Non-regulated soils" means soils contaminated with total petroleum hydrocarbon (TPH) levels equal to or less than 100 mg/kg which are neither hazardous waste, PCS, nor solid waste PCS, and which do not constitute an environmental nuisance pursuant to A.R.S. §§ 49-141 through 49-144.
8. "PCS" means petroleum-contaminated soils, which are not hazardous waste or solid waste PCS, which are excavated for storage, treatment, or disposal, and which contain contaminants as described by any of the following:
 - a. TPH which exceeds concentrations of 5,000 mg/kg,
 - b. Benzene which exceeds concentrations of 0.13 mg/kg,
 - c. Toluene which exceeds concentrations of 200 mg/kg,
 - d. Ethylbenzene which exceeds concentrations of 68 mg/kg,
 - e. Total xylene which exceeds concentrations of 44 mg/kg.
9. "PCS disposal facility" means a site or special waste receiving facility at which the disposal of PCS has been approved by the Director pursuant to A.R.S. § 49-857 or has qualified for Interim Use Facility status pursuant to A.R.S. § 49-858.
10. "Petroleum" means petroleum as defined in A.R.S. § 49-1001(11).
11. "Point of compliance" means point of compliance as defined in A.R.S. § 49-244.
12. "Special waste shipper" means a person who transports special waste for off-site treatment, storage, or disposal.
13. "Solid waste PCS" means excavated soils contaminated with petroleum, which are not hazardous waste and which meet any of the following:
 - a. Have TPH concentrations which exceed 100 mg/kg but which are at or below 5,000 mg/kg;
 - b. Are soils contaminated with non-fuel, non-solvent petroleum products with a TPH which exceeds 100 mg/kg.
14. "Storage" means the holding of PCS for a period of more than 90 days but less than one year.
15. "Storage facility" means a special waste receiving facility which engages in storage and which has been approved by the Director pursuant to A.R.S. § 49-857 or has qualified for Interim Use Facility status pursuant to A.R.S. § 49-858.
16. "Temporary treatment facility" means an on-site treatment facility, or an off-site treatment facility owned or operated by the generator of PCS, where the PCS is treated to reduce TPH, benzene, toluene, ethylbenzene, or total xylene concentrations and which complies with the requirements of R18-13-1610.
17. "Total petroleum hydrocarbons" or "TPH" means the sum of the aliphatic and aromatic hydrocarbon constituents contained in petroleum, as determined through laboratory testing.
18. "Treatability study" means a study in which a special waste is subjected to a treatment process to determine any one or more of the following:
 - a. Whether the waste is amenable to the treatment process,
 - b. What pretreatment is required,
 - c. The optimal process conditions needed to achieve the desired treatment,
 - d. The efficiency of a treatment process,
 - e. The characteristics and volumes of residual contaminants from a particular treatment process,
 - f. Toxicological and health effects.
19. "Treatment facility" means a special waste receiving facility which has been approved by the Director pursuant to A.R.S. § 49-857 or has qualified for Interim Use Facility status pursuant to A.R.S. § 49-858, and at which PCS receives treatment to reduce TPH or benzene, toluene, ethylbenzene, or total xylene concentrations.

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Historical Note

Recodified from R18-8-1601 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

R18-13-1602. Applicability

- A. The Director declares that PCS, as defined in R18-13-1601(8), constitutes a special waste as defined in A.R.S. § 49-851(A)(9). Except as otherwise provided in this Section and R18-13-1603, PCS shall be treated, stored, and disposed of in accordance with this Article. PCS shall not be diluted with any material or substance for purposes of avoiding applicability of these rules.
- B. PCS which is used in a treatability study shall comply with all of the following:
 1. The owner or operator of the facility where a treatability study is to be conducted shall notify the Department of its intent to conduct a treatability study at least 30 days prior to the commencement of the treatability study.
 2. The total quantity of PCS used in the treatability study shall not exceed 5000 kilograms, unless evidence is provided which justifies the need for a larger quantity and permission to use a larger amount is granted by the Director.
 3. The owner or operator of the facility shall maintain records detailing the treatability study and the results obtained in accordance with R18-13-1614.
 4. The treatability study shall be completed and the PCS shall be removed from the site within one year from commencement of the study.
 5. Upon completion of the treatability study, the owner or operator of a facility shall dispose of the PCS used in the treatability study in accordance with this Article.
 6. Sampling of the PCS shall be conducted in accordance with R18-13-1604(B) and (C) before and after the treatability study is performed.
 7. The performance of the treatability study shall not result in an environmental nuisance pursuant to A.R.S. §§ 49-141 through 49-144.
- C. PCS which is excavated pursuant to the requirements of A.R.S. Title 49, Chapter 6, Underground Storage Tank Regulation, and which is not removed from the site, shall comply with the requirements of R18-13-1610 and R18-13-1612.
- D. PCS incorporated into asphalt for use in paving is not subject to other provisions of this Article if the owner or operator of the facility where the asphalt is produced does all of the following:
 1. Notifies the Department in writing at least 30 days prior to commencing such incorporation,
 2. Maintains records in accordance with R18-13-1614,
 3. Stores the PCS prior to incorporation in accordance with R18-13-1611,
 4. Uses only soil characterized as PCS based on TPH concentrations as set forth in R18-13-1601(8)(a).

Historical Note

Recodified from R18-8-1602 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

R18-13-1603. Exemptions

- A. Solid waste PCS are exempt from the provisions of this Article, except for the requirements in R18-13-1604, and are subject to A.R.S. § 49-761 et seq.
- B. Non-regulated soils are exempt from the provisions of this Article, except for the requirements in R18-13-1604, and are exempt from the requirements of A.R.S. § 49-761 et seq.
- C. Asphaltic cement which is not hazardous waste is exempt from the requirements of this Article.

- D. Soils which are contaminated with petroleum, which have been generated by households, and which are not hazardous waste, shall be exempt from the requirements of this Article.
- E. Soil characterized as PCS solely because the TPH concentration exceeds 5,000 mg/kg may be disposed in accordance with A.R.S. § 49-761 et seq. and shall be exempt from the requirements of this Article, except that the generator shall comply only with the requirements for accumulation sites in R18-13-1612, if either of the following conditions are met:
 1. The mathematical product of the TPH (mg/kg) and the number of tons excavated is less than 10,000.
 2. The mathematical product of the TPH (mg/kg) and the number of cubic yards excavated is less than 8,500.

Historical Note

Recodified from R18-8-1603 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

R18-13-1604. Waste Determination

- A. A generator of excavated soil contaminated with petroleum shall determine whether the soil is PCS, solid waste PCS, or non-regulated soil. The basis for the determination shall be maintained for at least three years and shall be made available to the Department upon request. The generator shall make such determination using either of the following methods:
 1. Testing the soil pursuant to subsection (B) of this Section. Laboratory analysis of these samples shall be performed by a laboratory licensed by the Arizona Department of Health Services. Approved testing methods, which identify concentrations for total recoverable extraction of contaminants, shall be used.
 2. Application of knowledge of the characteristics of the contaminated soil in light of the known or potential source of the contamination. The Department may require sampling to confirm the accuracy of applied knowledge.
- B. Sampling of soils contaminated with petroleum shall be performed in accordance with a site-specific written sampling plan which is consistent with the requirements set forth in either of the following:
 1. "Test Methods for Evaluating Solid Waste", EPA SW-846, 3rd Edition Volume II: Field Manual, Physical/Chemical Method, Chapter Nine (SW-846 Third Edition), 1986, Environmental Protection Agency, Washington, D.C. and no future editions or amendments, incorporated herein by reference and on file with the Department and the Office of the Secretary of State.
 2. "Quality Assurance Project Plan", Chapter 9, May 1991 Edition, Arizona Department of Environmental Quality, Phoenix, Arizona and no future editions or amendments incorporated herein by reference and on file with the Department and the Office of the Secretary of State.
- C. Where multiple samples are collected from a stockpile of contaminated soil generated from a single source, the stockpile shall be considered as PCS if the arithmetic mean of the TPH concentrations of the samples exceeds 5,000 mg/kg. A sample having a concentration of total petroleum hydrocarbons which is below the analytical method detection limit or reporting limit shall be assigned a concentration which is 1/2 of the reported analytical method detection limit or reporting limit.
- D. If soil excavated during the initial investigation of a site to determine the extent of contamination is PCS, the PCS may be returned into the excavation site from which the soil was removed if all of the following conditions are met:
 1. There is no freestanding liquid within the excavation, unless the State Fire Marshal or other jurisdictional fire

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authority directs otherwise, and the requirements of subsections (2) and (3) of this subsection are met.

2. The owner or operator provides notification to the Department that the PCS has been returned to the excavation within 14 days after the return of the PCS to the excavation.
3. The owner or operator completes a site characterization within 120 days and implements remediation within 150 days after the date the site characterization began.

Historical Note

Recodified from R18-8-1604 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

R18-13-1605. Transportation

- A. PCS transported to a special waste receiving facility in Arizona shall be transported by a special waste shipper which has met the requirements of R18-13-1303.
- B. A special waste shipper shall transport the PCS in closed containers pursuant to R18-13-1611(E) or shall ensure that any vehicle used to transport the PCS is loaded and covered in such a manner that the contents will not blow, fall, leak, or spill from the vehicle.
- C. A special waste shipper transporting PCS to a special waste receiving facility in Arizona, except a facility located on Indian country, shall deliver PCS to a special waste receiving facility approved by the Department.

Historical Note

Recodified from R18-8-1605 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

R18-13-1606. Fees

In accordance with A.R.S. §§ 49-855(C)(2) and 49-863, the treatment, storage, or disposal facility in this state that first receives a shipment of PCS shall remit to the Department a fee of \$4.50 per ton but not more than \$45,000 per generator site per year for PCS that is transported to the facility.

Historical Note

Recodified from R18-8-1606 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4). Amended by final rulemaking at 18 A.A.R. 1217, effective July 1, 2012 (Supp. 12-2).

R18-13-1607. Facility Approval; Application

- A. PCS shall be treated, stored, or disposed only at a PCS disposal facility, storage facility, treatment facility, or temporary treatment facility. A facility shall not be constructed or operated prior to obtaining written approval from the Department, except as provided for in A.R.S. § 49-858.
- B. The owner or operator of a PCS treatment, storage, or disposal facility shall submit an application to the Department which contains all of the information required in accordance with A.R.S. § 49-762.
- C. In addition to the requirements specified in A.R.S. § 49-762, the application shall contain all of the following:
 1. A vicinity map, in a scale not over 1:24,000, which shows where the facility is located with respect to the surroundings, including an indication of the use of the adjacent properties.
 2. An engineering report which includes all of the following:
 - a. Detailed plans and specifications for the entire facility including manufacturer's performance data and design features of treatment, pollution control, and monitoring equipment.
 - b. A site description which includes general information on the geology, hydrogeology, soils, and land

use. If a facility is located within the pollution management area of a facility for which an aquifer protection permit has been issued under A.R.S. § 49-241 et seq., then the applicant may resubmit or incorporate by reference the general information.

- c. A background soil sampling plan and results which characterize the site, including the rationale used to determine the locations, depths, and number of samples.
3. A site map, in a scale not to exceed 1:2,400, which clearly identifies where the PCS shall be deposited, containment berms, fencing and security measures, access roads, any improvements, wells, and location of surface water courses.
4. An operational plan which includes all of the following:
 - a. General description of the daily operations of the facility and the processes, techniques, or methods to be employed;
 - b. The source, amount, concentration of contaminants, and any other relevant information concerning the PCS to be handled;
 - c. The schedule for sampling the PCS during treatment to evaluate treatment methods;
 - d. Description of plans for final use and disposal of PCS and remediated soil, liners, piping, carbon canisters, and any other contaminated equipment;
 - e. Procedures to ensure that only waste which has been characterized is received and that hazardous waste is not received;
 - f. Procedures for random inspection of incoming loads to verify that only waste which has been characterized is accepted;
 - g. Procedures for collecting and managing run-off which comes in contact with PCS;
 - h. Procedures for recordkeeping of all inspection results, training of personnel, and sampling results;
 - i. Procedures to control public access, and prevent unauthorized entry and illegal dumping.
5. A contingency plan for emergency preparedness which describes alternatives for storage, treatment, or disposal.
6. A closure plan which includes:
 - a. A description of the steps necessary to close the facility, the specific proposed closure activities, and an implementation schedule;
 - b. Information on site conditions and characterization of the waste received during the life of the facility;
 - c. A description of the sampling plan utilized to sample background soil beneath the site following closure;
 - d. A description of plans for use of the land site after closure;
 - e. A description of post-closure care.
7. An affidavit that the proposed facility is in compliance with local zoning requirements in effect at the time the application is submitted.
- D. Following completion of construction of a facility and prior to placement of PCS on the site, the owner or operator shall submit to the Department a construction certification report, including as-built plans which indicate any changes to the design or operational plans for the facility.
- E. Plans required in accordance with this Section shall be sealed by a professional engineer registered in the state of Arizona, if required by statute.
- F. A facility shall be in compliance with all other applicable federal, state, and local approvals or permits which are required for the design, construction, and operation of the facility.

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Historical Note

Recodified from R18-8-1607 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

R18-13-1608. General Design and Performance Standards

- A.** A facility which receives PCS for treatment, storage, or disposal shall be designed and operated to ensure compliance with the following performance standards relating to aquifer protection:
1. Pollutants discharged shall in no event cause or contribute to a violation of Aquifer Water Quality Standards, at the applicable point of compliance, or, if the facility is a municipal solid waste landfill, it shall comply with the requirements of A.R.S. § 49-761.01(C).
 2. Any pollutant discharged shall not further degrade, at the applicable point of compliance, the quality of any aquifer that already violates an Aquifer Water Quality Standard for that pollutant.
- B.** A facility which receives PCS for treatment, storage, or disposal shall meet the general design criteria of either subsection (B)(1) or (2) as follows:
1. The PCS shall be held within a containment system designed and constructed to preclude the migration of contaminants into subsurface soil, groundwater, or surface water. The containment system shall meet the following criteria:
 - a. Maintain a maximum hydraulic conductivity of no more than 1×10^{-7} cm/sec;
 - b. Be designed to provide structural integrity throughout the life of the facility;
 - c. Be designed in accordance with the applicable design criteria set forth in subsection (C) of this Section and R18-13-1609 through R18-13-1613; or
 2. An alternative design shall contain, at a minimum, all of the following and shall demonstrate that the design will limit discharges listed in A.R.S. § 49-243(D) to the maximum extent practicable:
 - a. The hydrogeologic setting of the facility and the capacity of the liner and soils to preclude discharge to groundwater or surface water;
 - b. The operating methods, processes, or other alternatives to be used at the facility;
 - c. Additional factors which would influence the quality and mobility of the leachate produced and the potential for that leachate to migrate to groundwater or surface water.
- C.** A PCS treatment, storage, or disposal facility shall meet the following general design criteria:
1. The facility shall be designed to prevent run-on and run-off. The design shall provide run-on control for the peak discharge from a 24-hour, 25-year storm event. Run-off shall be collected and controlled for at least the water volume resulting from a 24-hour, 25-year storm event.
 2. The facility shall not restrict the flow of the 100-year floodplain, reduce temporary water storage capacity of the floodplain, or be maintained in a manner which results in a washout or inundation of the PCS.
 3. The owner or operator shall control public access and shall prevent unauthorized vehicular traffic and illegal dumping.
 4. The owner or operator shall manage any standing water that has come into contact with the PCS in accordance with rules promulgated pursuant to A.R.S. § 49-761 et seq.
- D.** A facility which manages PCS in accordance with the requirements of this Article shall be exempt from the aquifer protection permit requirements in accordance with A.R.S. § 49-250(B)(21).

- E.** A facility which has been issued an aquifer protection permit from the Department shall be exempt from the requirements of subsections (A) and (B) of this Section but shall comply with the requirements of subsection (C).

Historical note

Recodified from R18-8-1608 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

R18-13-1609. Treatment Facility

- A.** The owner or operator of a PCS treatment facility shall obtain approval from the Department prior to commencement of construction or operation and shall comply with all of the following:
1. Not dilute PCS as a method of treatment, except as allowed in the approved plan for the facility;
 2. Treat the PCS or, if the chosen treatment process fails to remediate the soil to below the regulatory thresholds, dispose of the PCS pursuant to R18-13-1613.
 3. Sample the treated soil and provide the results of the sampling to the Department within 45 days of completion of the treatment.
- B.** A PCS treatment facility designed in accordance with R18-13-1608(B)(1) shall comply with the following specific design criteria:
1. At a minimum, a containment system shall include a clay, synthetic, concrete, or asphalt liner component which is placed upon a foundation or prepared subgrade which supports the liner, and resists pressure gradients above and below the liner, to prevent failure due to settlement, compression, or uplift.
 2. During construction or installation of a containment system, liners and cover systems shall be inspected for uniformity, damage, and imperfections. Immediately after construction or installation is completed, and prior to placement of PCS within the containment system, the systems shall be checked for both of the following:
 - a. Synthetic liners and covers shall be inspected to ensure tight seams and joints and the absence of tears, punctures, or blisters.
 - b. Concrete, asphalt, and soil-based liners and covers shall be inspected for imperfections including lenses, cracks, channels, root holes, or other structural non-uniformities that may cause an increase in the permeability of the liner or cover.
 3. The liner component shall consist of one of the following:
 - a. A synthetic liner which is compatible with the waste and which has a minimum 6" buffer layer of sand or soil between the liner and the PCS.
 - b. A compacted soil or admixed liner provided with a minimum 6" buffer layer of sand or soil between the liner and the PCS.
 - c. An asphalt or reinforced concrete liner which is not in the drainage area of a dry well and is free of unsealed cracks and seams.
 4. Aeration equipment shall be limited to the area above the buffer layers indicated in subsections (B)(2)(a) and (b).
 5. The owner or operator of the facility shall utilize protective measures to ensure containment system integrity during placement, treatment, or removal of the PCS.
 6. PCS stored at a treatment facility prior to treatment shall be stored in accordance with the requirements of R18-13-1611.

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Historical Note

Recodified from R18-8-1609 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

R18-13-1610. Temporary Treatment Facility

- A.** The owner or operator of a temporary treatment facility shall treat and remove all PCS from the temporary treatment facility within one year from the date of commencement of receipt of PCS for treatment. PCS shall not be diluted to meet any treatment requirement, except in accordance with the approved plan.
- B.** A temporary treatment facility shall obtain approval from the Department prior to commencing construction or operation. In lieu of the requirements of R18-13-1607(C), an application for approval shall contain all of the following:
1. An affidavit signed by the owner or operator of the temporary treatment facility which states that the facility will comply with the requirements of this Article;
 2. An affidavit that the proposed facility is in compliance with local zoning requirements in effect at the time the application is submitted;
 3. Application information required pursuant to A.R.S. § 49-762 for plan approval for temporary treatment facilities;
 4. A vicinity map, in a scale not over 1:24,000, which shows where the facility is located with respect to the surroundings, including an indication of the use of the adjacent properties;
 5. A site description which includes general information on the geology, hydrogeology, soils, and land use;
 6. A background soil sampling plan and results which characterize the site, including the rationale used to determine the locations, depths and number of samples;
 7. A site map, in a scale not to exceed 1:2,400, which clearly identifies where the PCS shall be deposited, containment berms, fencing and security measures, access roads, any improvements, wells, and location of surface water courses;
 8. An operational plan which includes all of the following:
 - a. General description of the daily operations of the facility and the processes, techniques, or methods to be employed;
 - b. The source, amount, concentration of contaminants, and any other relevant information concerning the PCS to be handled;
 - c. The schedule for sampling the PCS during treatment to evaluate treatment methods;
 - d. Description of plans for final use and disposal of PCS and remediated soil, liners, piping, carbon canisters, and any other contaminated equipment;
 9. A closure and post-closure care plan which includes both of the following:
 - a. A description of the steps necessary to close the facility, the specific proposed closure activities, and an implementation schedule;
 - b. A description of the sampling plan utilized to sample background soil beneath the site following closure.
- C.** A temporary treatment facility shall not be operated for more than one year unless a one-time extension is granted by the Department. The Department may grant an extension of up to one additional year if all of the following are met:
1. The inability to perform is caused by events beyond the control of the owner or operator, including acts of God, which include flood, tornado, earthquake, and causes beyond the owner's or operator's control including fire, explosion, unforeseen strikes or work stoppages, riot, sabotage, public enemy, war, requirements established by

courts of competent jurisdiction, and other governing law. Financial inability to perform shall not be justification for an extension.

2. The owner and operator submits to the Department verifiable documentation which includes all of the following:
 - a. A description of the circumstances causing any delay;
 - b. Evidence of the existence of the circumstance;
 - c. A description of past, present, and future measures taken or to be taken by the owner or operator to prevent or minimize any delay;
 - d. A timetable by which the owner and operator will resume and complete required performance.
 3. The request is received at least 60 days prior to the expiration of the year in which the facility first received PCS. Where the Department grants an extension, that extension shall be granted prior to the expiration of the deadline and communicated to the owner or operator in writing.
- D.** A temporary treatment facility shall meet the design criteria as specified in R18-13-1608 and R18-13-1609(B).
- E.** PCS stored at a temporary treatment facility prior to treatment shall be stored in accordance with the requirements of R18-13-1611.
- F.** In accordance with A.R.S. § 49-762(F), a temporary treatment facility shall be exempt from the notice and public hearing requirements set forth in A.R.S. § 49-762(L).

Historical Note

Recodified from R18-8-1610 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

R18-13-1611. Storage Facility

- A.** A shipment of PCS shall not be stored for a period exceeding one year from the date the PCS is received.
- B.** Each shipment of contaminated soil shall be identified by source and stored in a manner which does not allow commingling of different shipments until all sampling results have been obtained. PCS shall be stored within an approved containment system and shall not be commingled with treated soils.
- C.** A PCS storage facility shall obtain approval from the Department prior to commencement of construction or operation. A PCS storage facility designed in accordance with R18-13-1608(B)(1) shall comply with either of the following:
1. The containment system shall meet the requirements of R18-13-1609(B).
 2. The PCS shall be stored in tanks or containers which meet the requirements of subsection (E) of this Section.
- D.** A PCS storage area or each tank or container used for storage shall be marked as follows:
- CAUTION: CONTAINS PETROLEUM-CONTAMINATED SOIL
GENERATOR NAME:
GENERATOR ID#:
ACCUMULATION START DATE:
- The owner or operator of the storage facility shall fill in the accumulation start date at the time the PCS is placed into storage. The letters shall be legible, not obstructed from view, on a high contrast background, and sufficiently durable to equal or exceed the duration of storage. Lettering size shall be 2.5 cm (1 inch) and in Sans Serif, Gothic, or Block style.
- E.** A tank or container used to store PCS shall meet all of the following requirements:
1. Prevent leakage of PCS and any free liquids from the tank or container;
 2. Be made of, or lined with, materials which will not react with the PCS;

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3. Be kept closed during storage except to add or remove PCS;
 4. Not be opened, handled, or stored in a manner which may rupture the tank or container or cause it to leak;
 5. Shall be inspected monthly by the owner or operator of the storage facility for leaks and for deterioration. A written record of the inspection shall be prepared at the time of the inspection and shall document corrective action, if any, taken as a result of the inspection.
- F. A PCS storage facility at which PCS is stored in piles shall comply with both of the following:
1. All storage piles shall be covered or otherwise managed to control wind dispersal of the PCS.
 2. Storage piles of PCS shall be inspected weekly and a written record of the inspection shall be prepared at the time of the inspection which documents any corrective action taken as a result of the inspection. The record shall document detection of any of the following:
 - a. Deterioration, malfunctions, or improper operation of run-on and run-off control systems;
 - b. Malfunctioning of wind dispersal control systems;
 - c. The presence of leachate in and the malfunctioning of any leachate collection and removal systems.

Historical Note

Recodified from R18-8-1611 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

R18-13-1612. Accumulation Sites

- A. PCS from one or more points of generation under the control of a single generator may be accumulated in an accumulation site under the control of that generator for up to 90 days prior to shipment of the PCS to a storage, disposal, or treatment facility.
- B. An accumulation site shall comply with the storage facility requirements set forth in R18-13-1611, except subsection (A) of that Section. An accumulation site shall not be required to comply with the requirements in R18-13-1607.
- C. While PCS is at an accumulation site, the owner or operator shall control public access and prevent unauthorized vehicular traffic and illegal dumping. PCS shall be managed to prevent the PCS from being exposed to storm water run-on or run-off.

Historical Note

Recodified from R18-8-1612 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

R18-13-1613. Disposal

- A. PCS shall be disposed at a special waste receiving facility which has been approved for the disposal of PCS, or at a hazardous waste management facility as defined in R18-13-260(E)(13).
- B. A PCS disposal facility designed in accordance with R18-13-1608(B)(1) shall comply with the following specific design criteria:
 1. The disposal facility shall be designed with a composite liner, as defined in subsection (B)(2), and a leachate collection system that is designed and constructed to maintain less than a 12-inch depth of leachate over the liner.
 2. For purposes of this Section, "composite liner" means a system consisting of two components: the upper component shall consist of a minimum 30-mil flexible membrane liner (FML) and the lower component shall consist of at least a two-foot layer of compacted soil with a hydraulic conductivity of no more than 1×10^{-7} cm/sec. FML components consisting of high density polyethylene (HDPE) shall be at least 60 mil thick. The FML compo-

nent shall be installed in direct and uniform contact with the compacted soil component.

Historical Note

Recodified from R18-8-1613 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

R18-13-1614. Records

Records required to be kept pursuant to this Article shall be maintained by the owner or operator and made available for inspection by the Director for a period of three years or longer during the course of an enforcement action or litigation.

Historical Note

Recodified from R18-8-1614 at 8 A.A.R. 5172, effective November 27, 2002 (Supp. 02-4).

ARTICLE 17. RESERVED**ARTICLE 18. RESERVED****ARTICLE 19. RESERVED****ARTICLE 20. RESERVED****ARTICLE 21. SOLID WASTE LANDFILL REGISTRATION FEES**

Article 21, consisting of Sections R18-13-2101 through R18-13-2103, made by final rulemaking at 9 A.A.R. 1770, effective July 14, 2003 (Supp. 03-2).

R18-13-2101. Definitions

In addition to the definitions in A.R.S. §§ 49-701 and 49-701.01, for the purpose of this Article, the terms used in this Article have the following meanings:

1. "Defined time period" means the 12-month period that begins on July 1 of a calendar year and ends on June 30 of the following calendar year and consists of the actual number of calendar days in that 12-month period.
2. "Disposal fee invoice" means the quarterly landfill disposal fee invoice the Department mails to a landfill operator, on which the landfill operator indicates the amount of waste received and the amount of the disposal fees owed to the Department as required under A.R.S. § 49-836.
3. "Full quarter" means any of the standard fiscal quarters of the defined time period for which a municipal solid waste landfill accepted waste on or before the first day of the quarter and on or after the last day of that quarter.

Historical Note

New Section made by final rulemaking at 9 A.A.R. 1770, effective July 14, 2003 (Supp. 03-2). Amended by final rulemaking at 18 A.A.R. 1217, effective July 1, 2012 (Supp. 12-2).

R18-13-2102. Annual Registration Fee for an Existing Solid Waste Landfill

- A. An existing solid waste landfill, except those described in subsection (C), shall pay an annual registration fee within 30 days of receipt of an invoice from the Department according to the following:
 1. For municipal solid waste landfills that received less than 12,000 tons during the defined time period, \$1,250.
 2. For municipal solid waste landfills that received at least 12,000 tons but less than 60,000 tons during the defined time period, \$2,500.
 3. For municipal solid waste landfills that received at least 60,000 tons but less than 225,000 tons during the defined time period, \$7,500.
 4. For municipal solid waste landfills that received 225,000 tons or more during the defined time period, \$12,500.

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5. Non-municipal solid waste landfills shall pay a flat fee of \$3,750.
 6. Solid waste landfills that are closed to the public and that accept nonhazardous waste only shall pay a flat fee of \$3,750.
- B.** The Department shall determine the amount of waste received by a municipal solid waste landfill by one of the following methods:
1. For a municipal solid waste landfill that accepted waste over the entire defined time period:
 - a. As the reported tons of solid waste received on the disposal fee invoice; or
 - b. As the reported units of compacted or uncompacted solid waste received on the disposal fee invoice and reported under A.R.S. § 49-836(A)(1); or
 2. For a municipal solid waste landfill that accepted waste for only a portion of the defined time period, but no less than a full quarter, the Department shall project the total amount of waste that would have been received by the landfill over the entire defined time period, using one of the following methods:
 - a. For a municipal solid waste landfill that reported receiving waste for at least a full three quarters but less than the entire defined period, the amount of waste for the remaining quarter is the total amount of the waste reported for the full three quarters divided by three;
 - b. For a municipal solid waste landfill that reported receiving waste for at least a full two quarters but less than three quarters, the amount of waste for the remaining two quarters is the same as the total amount of waste reported for the two full quarters; or
 - c. For a municipal solid waste landfill that reported receiving waste for at least one full quarter but less than two quarters, the amount of waste for the remaining three quarters is the total of the amount of the waste reported for the full quarter multiplied by three.
- C.** For a municipal solid waste landfill that accepted waste for less than a full quarter, the annual landfill registration fee is \$1,250.

Historical Note

New Section made by final rulemaking at 9 A.A.R. 1770, effective July 14, 2003 (Supp. 03-2). Amended by final rulemaking at 18 A.A.R. 1217, effective July 1, 2012 (Supp. 12-2).

R18-13-2103. Annual Landfill Registration: Due Date and Fees

- A.** An operator of a new solid waste landfill shall register the solid waste landfill and pay the landfill registration fee as follows:
1. The operator shall pay the initial landfill registration fee within 30 days of the date that the Department approves the facility plan. The initial landfill registration fee is \$1,250.
 2. Registration is valid for one year, except if the landfill is initially registered during October, November, or December of a calendar year, the next landfill registration due date is December 31 of the following calendar year and each calendar year thereafter unless released from the annual landfill registration requirement as specified in subsection (C).
 3. The annual registration fee remains \$1,250 until the first annual registration period after the first full quarter of the defined time period.

- B.** After the first full quarter, the Department shall calculate the annual registration fee according to R18-13-2102, and specify the fee on the Department's annual landfill registration invoice for the solid waste landfill. The Department shall calculate and the solid waste landfill shall pay the annual landfill registration fee until the first registration period after the solid waste landfill stops accepting waste during a fiscal quarter of the defined time period.
- C.** From the time a solid waste landfill stops accepting waste as specified in subsection (B), until the owner or operator of the solid waste landfill is released from its obligation to provide financial assurance for closure as required by A.R.S. §§ 49-761 or 49-770, the annual registration fee is \$1,250.

Historical Note

New Section made by final rulemaking at 9 A.A.R. 1770, effective July 14, 2003 (Supp. 03-2). Amended by final rulemaking at 18 A.A.R. 1217, effective July 1, 2012 (Supp. 12-2).

ARTICLE 22. RESERVED**ARTICLE 23. RESERVED****ARTICLE 24. RESERVED****ARTICLE 25. EXPIRED****R18-13-2501. Expired****Historical Note**

Section adopted by final rulemaking at 5 A.A.R. 4654, effective November 15, 1999 (Supp. 99-4). Section expired under A.R.S. § 41-1056(J), at 23 A.A.R. 3429, effective October 10, 2017 (Supp. 17-4).

ARTICLE 26. EXPIRED**R18-13-2601. Expired****Historical Note**

Section made by exempt rulemaking at 14 A.A.R. 4258, effective October 20, 2008 (Supp. 08-4). Section expired under A.R.S. § 41-1056(E) at 16 A.A.R. 705, effective April 6, 2010 (Supp. 10-2).

R18-13-2602. Expired**Historical Note**

Section made by exempt rulemaking at 14 A.A.R. 4258, effective October 20, 2008 (Supp. 08-4). Section expired under A.R.S. § 41-1056(E) at 16 A.A.R. 705, effective April 6, 2010 (Supp. 10-2).

R18-13-2603. Expired**Historical Note**

Section made by exempt rulemaking at 14 A.A.R. 4258, effective October 20, 2008 (Supp. 08-4). Section expired under A.R.S. § 41-1056(E) at 16 A.A.R. 705, effective April 6, 2010 (Supp. 10-2).

R18-13-2604. Expired**Historical Note**

Section made by exempt rulemaking at 14 A.A.R. 4258, effective October 20, 2008 (Supp. 08-4). Section expired under A.R.S. § 41-1056(E) at 16 A.A.R. 705, effective April 6, 2010 (Supp. 10-2).

ARTICLE 27. EXPIRED**R18-13-2701. Expired****Historical Note**

New Section made by exempt rulemaking at 16 A.A.R.

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848, effective July 1, 2010 (Supp. 10-2). Amended by exempt rulemaking at 16 A.A.R. 1503, effective July 1, 2010 (Supp. 10-3). Section expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2984, effective September 15, 2016 (Supp. 16-3).

R18-13-2702. Expired

Historical Note

New Section made by exempt rulemaking at 16 A.A.R. 848, effective July 1, 2010 (Supp. 10-2). Section expired

under A.R.S. § 41-1056(J) at 22 A.A.R. 2984, effective September 15, 2016 (Supp. 16-3).

R18-13-2703. Expired

Historical Note

New Section made by exempt rulemaking at 16 A.A.R. 848, effective July 1, 2010 (Supp. 10-2). Section and fee table expired under A.R.S. § 41-1056(J) at 22 A.A.R. 2984, effective September 15, 2016 (Supp. 16-3).

41-1001. Definitions

In this chapter, unless the context otherwise requires:

1. "Agency" means any board, commission, department, officer or other administrative unit of this state, including the agency head and one or more members of the agency head or agency employees or other persons directly or indirectly purporting to act on behalf or under the authority of the agency head, whether created under the Constitution of Arizona or by enactment of the legislature. Agency does not include the legislature, the courts or the governor. Agency does not include a political subdivision of this state or any of the administrative units of a political subdivision, but does include any board, commission, department, officer or other administrative unit created or appointed by joint or concerted action of an agency and one or more political subdivisions of this state or any of their units. To the extent an administrative unit purports to exercise authority subject to this chapter, an administrative unit otherwise qualifying as an agency must be treated as a separate agency even if the administrative unit is located within or subordinate to another agency.

2. "Audit" means an audit, investigation or inspection pursuant to title 23, chapter 2 or 4.

3. "Code" means the Arizona administrative code, which is published pursuant to section 41-1011.

4. "Committee" means the administrative rules oversight committee.

5. "Contested case" means any proceeding, including rate making, except rate making pursuant to article XV, Constitution of Arizona, price fixing and licensing, in which the legal rights, duties or privileges of a party are required or permitted by law, other than this chapter, to be determined by an agency after an opportunity for an administrative hearing.

6. "Council" means the governor's regulatory review council.

7. "Delegation agreement" means an agreement between an agency and a political subdivision that authorizes the political subdivision to exercise functions, powers or duties conferred on the delegating agency by a provision of law. Delegation agreement does not include intergovernmental agreements entered into pursuant to title 11, chapter 7, article 3.

8. "Emergency rule" means a rule that is made pursuant to section 41-1026.

9. "Fee" means a charge prescribed by an agency for an inspection or for obtaining a license.

10. "Final rule" means any rule filed with the secretary of state and made pursuant to an exemption from this chapter in section 41-1005, made pursuant to section 41-1026, approved by the council pursuant to section 41-1052 or 41-1053 or approved by the attorney general pursuant to section 41-1044. For purposes of judicial review, final rule includes expedited rules pursuant to section 41-1027.

11. "General permit" means a regulatory permit, license or agency authorization that is for facilities, activities or practices in a class that are substantially similar in nature and that is issued or granted by an agency to a qualified applicant to conduct identified operations or activities if the applicant meets the applicable requirements of the general permit, that requires less information than an individual or traditional permit, license or authorization and that does not require a public hearing.

12. "License" includes the whole or part of any agency permit, certificate, approval, registration, charter or similar form of permission required by law, but does not include a license required solely for revenue purposes.

13. "Licensing" includes the agency process respecting the grant, denial, renewal, revocation, suspension, annulment, withdrawal or amendment of a license.

14. "Party" means each person or agency named or admitted as a party or properly seeking and entitled as of right to be admitted as a party.

15. "Person" means an individual, partnership, corporation, association, governmental subdivision or unit of a governmental subdivision, a public or private organization of any character or another agency.

16. "Preamble" means:

(a) For any rulemaking subject to this chapter, a statement accompanying the rule that includes:

(i) Reference to the specific statutory authority for the rule.

(ii) The name and address of agency personnel with whom persons may communicate regarding the rule.

(iii) An explanation of the rule, including the agency's reasons for initiating the rulemaking.

(iv) A reference to any study relevant to the rule that the agency reviewed and either proposes to rely on in its evaluation of or justification for the rule or proposes 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.

(v) The economic, small business and consumer impact summary, or in the case of a proposed rule, a preliminary summary and a solicitation of input on the accuracy of the summary.

(vi) 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.

(vii) Such other matters as are prescribed by statute and that are applicable to the specific agency or to any specific rule or class of rules.

(b) In addition to the information set forth in subdivision (a) of this paragraph, for a proposed rule, the preamble also shall include a list of all previous notices appearing in the register addressing the proposed rule, a statement of the time, place and nature of the proceedings for the making, amendment or repeal of the rule and where, when and how persons may request an oral proceeding on the proposed rule if the notice does not provide for one.

(c) In addition to the information set forth in subdivision (a) of this paragraph, for an expedited rule, the preamble also shall include a statement of the time, place and nature of the proceedings for the making, amendment or repeal of the rule and an explanation of why expedited proceedings are justified.

(d) For a final rule, except an emergency rule, the preamble also shall include, in addition to the information set forth in subdivision (a), the following information:

(i) A list of all previous notices appearing in the register addressing the final rule.

(ii) A description of the changes between the proposed rules, including supplemental notices and final rules.

(iii) A summary of the comments made regarding the rule and the agency response to them.

(iv) A summary of the council's action on the rule.

(v) A statement of the rule's effective date.

(e) In addition to the information set forth in subdivision (a) of this paragraph, for an emergency rule, the preamble also shall include an explanation of the situation justifying the rule being made as an emergency rule, the date of the attorney general's approval of the rule and a statement of the emergency rule's effective date.

17. "Provision of law" means the whole or a part of the federal or state constitution, or of any federal or state statute, rule of court, executive order or rule of an administrative agency.

18. "Register" means the Arizona administrative register, which is:

(a) This state's official publication of rulemaking notices that are filed with the office of secretary of state.

(b) Published pursuant to section 41-1011.

19. "Rule" means an agency statement of general applicability that implements, interprets or prescribes law or policy, or describes the procedure or practice requirements of an agency. Rule includes prescribing fees or the amendment or repeal of a prior rule but does not include intraagency memoranda that are not delegation agreements.

20. "Rulemaking" means the process to make a new rule or amend, repeal or renumber a rule.

21. "Small business" means a concern, including its affiliates, which is independently owned and operated, which is not dominant in its field and which employs fewer than one hundred full-time employees or which had gross annual receipts of less than four million dollars in its last fiscal year. For purposes of a specific rule, an agency may define small business to include more persons if it finds that such a definition is necessary to adapt the rule to the needs and problems of small businesses and organizations.

22. "Substantive policy statement" means a written expression which informs the general public of an agency's current approach to, or opinion of, the requirements of the federal or state constitution, federal or state statute, administrative rule or regulation, or final judgment of a court of competent jurisdiction, including, where appropriate, the agency's current practice, procedure or method of action based upon that approach or opinion. A substantive policy statement is advisory only. A substantive policy statement does not include internal procedural documents which only affect the internal procedures of the agency and does not impose additional requirements or penalties on regulated parties, confidential information or rules made in accordance with this chapter.

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

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.

49-701. Definitions

In this chapter, unless the context otherwise requires:

1. "Administratively complete plan" means an application for a solid waste facility plan approval that the department has determined contains each of the components required by statute or rule but that has not undergone technical review or public notice by the department.
2. "Administrator" means the administrator of the United States environmental protection agency.
3. "Closed solid waste facility" means any of the following:
 - (a) A solid waste facility that ceases storing, treating, processing or receiving for disposal solid waste before the effective date of design and operation rules for that type of facility adopted pursuant to section 49-761.
 - (b) A public solid waste landfill that meets any of the following criteria:
 - (i) Ceased receiving solid waste prior to July 1, 1983.
 - (ii) Ceased receiving solid waste and received at least two feet of cover material prior to January 1, 1986.
 - (iii) Received approval for closure from the department.
 - (c) A public composting plant or a public incinerating facility that closed in accordance with an approved plan.
4. "Conditionally exempt small quantity generator waste" means hazardous waste in quantities as defined by rules adopted pursuant to section 49-922.
5. "Construction debris" means solid waste derived from the construction, repair or remodeling of buildings or other structures.
6. "County" means:
 - (a) The board of supervisors in the context of the exercise of powers or duties.
 - (b) The unincorporated areas in the context of area of jurisdiction.
7. "Demolition debris" means solid waste derived from the demolition of buildings or other structures.
8. "Discharge" has the same meaning prescribed in section 49-201.
9. "Existing solid waste facility" means a solid waste facility that begins construction or is in operation on the effective date of the design and operation rules adopted by the director pursuant to section 49-761 for that type of solid waste facility.
10. "Facility plan" means any design or operating plan for a solid waste facility or group of solid waste facilities.
11. "40 C.F.R. part 257" means 40 Code of Federal Regulations part 257 in effect on May 1, 2004.
12. "40 C.F.R. part 258" means 40 Code of Federal Regulations part 258 in effect on May 1, 2004.
13. "Household hazardous waste" means solid waste as described in 40 Code of Federal Regulations section 261.4(b)(1) as incorporated by reference in the rules adopted pursuant to chapter 5 of this title.
14. "Household waste" means any solid waste including garbage, rubbish and sanitary waste from septic tanks that is generated from households including single and multiple family residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds and day use recreation areas, not including construction debris, landscaping rubble or demolition debris.
15. "Inert material":
 - (a) Means material that satisfies all of the following conditions:
 - (i) Is not flammable.
 - (ii) Will not decompose.

(iii) Will not leach substances in concentrations that exceed applicable aquifer water quality standards prescribed by section 49-201, paragraph 20 when subjected to a water leach test that is designed to approximate natural infiltrating waters.

(b) Includes concrete, asphaltic pavement, brick, rock, gravel, sand, soil and metal, if used as reinforcement in concrete, but does not include special waste, hazardous waste, glass or other metal.

16. "Land disposal" means placement of solid waste in or on land.

17. "Landscaping rubble" means material that is derived from landscaping or reclamation activities and that may contain inert material and no more than ten per cent by volume of vegetative waste.

18. "Management agency" means any person responsible for the day-to-day operation, maintenance and management of a particular public facility or group of public facilities.

19. "Medical waste" means any solid waste which is generated in the diagnosis, treatment or immunization of a human being or animal or in any research relating to that diagnosis, treatment or immunization, or in the production or testing of biologicals, and includes discarded drugs but does not include hazardous waste as defined in section 49-921 other than conditionally exempt small quantity generator waste.

20. "Municipal solid waste landfill" means any solid waste landfill that accepts household waste, household hazardous waste or conditionally exempt small quantity generator waste.

21. "New solid waste facility" means a solid waste facility that begins construction or operation after the effective date of design and operating rules that are adopted pursuant to section 49-761 for that type of solid waste facility.

22. "On site" means the same or geographically contiguous property that may be divided by public or private right-of-way if the entrance and exit between the properties are at a crossroads intersection and access is by crossing the right-of-way and not by traveling along the right-of-way. Noncontiguous properties that are owned by the same person and connected by a right-of-way that is controlled by that person and to which the public does not have access are deemed on site property. Noncontiguous properties that are owned or operated by the same person regardless of right-of-way control are also deemed on site property.

23. "Person" means any public or private corporation, company, partnership, firm, association or society of persons, the federal government and any of its departments or agencies, this state or any of its agencies, departments, political subdivisions, counties, towns or municipal corporations, as well as a natural person.

24. "Process" or "processing" means the reduction, separation, recovery, conversion or recycling of solid waste.

25. "Public solid waste facility" means a transfer facility and any site owned, operated or utilized by any person for the storage, processing, treatment or disposal of solid waste that is not generated on site.

26. "Recycling facility" means a solid waste facility that is owned, operated or used for the storage, treatment or processing of recyclable solid waste and that handles wastes that have a significant adverse effect on the environment.

27. "Salvaging" means the removal of solid waste from a solid waste facility with the permission and in accordance with rules or ordinances of the management agency for purposes of productive reuse.

28. "Scavenging" means the unauthorized removal of solid waste from a solid waste facility.

29. "Solid waste facility" means a transfer facility and any site owned, operated or utilized by any person for the storage, processing,

treatment or disposal of solid waste, conditionally exempt small quantity generator waste or household hazardous waste but does not include the following:

(a) A site at which less than one ton of solid waste that is not household waste, household hazardous waste, conditionally exempt small quantity generator waste, medical waste or special waste and that was generated on site is stored, processed, treated or disposed in compliance with section 49-762.07, subsection F.

(b) A site at which solid waste that was generated on site is stored for ninety days or less.

(c) A site at which nonputrescible solid waste that was generated on site in amounts of less than one thousand kilograms per month per type of nonputrescible solid waste is stored and contained for one hundred eighty days or less.

(d) A site that stores, treats or processes paper, glass, wood, cardboard, household textiles, scrap metal, plastic, vegetative waste, aluminum, steel or other recyclable material and that is not a waste tire facility, a transfer facility or a recycling facility.

(e) A site where sludge from a wastewater treatment facility is applied to the land as a fertilizer or beneficial soil amendment in accordance with sludge application requirements.

(f) A closed solid waste facility.

(g) A solid waste landfill that is performing or has completed postclosure care before July 1, 1996 in accordance with an approved postclosure plan.

(h) A closed solid waste landfill performing a onetime removal of solid waste from the closed solid waste landfill, if the operator provides a written notice that describes the removal project to the department within thirty days after completion of the removal project.

(i) A site where solid waste generated in street sweeping activities is stored, processed or treated prior to disposal at a solid waste facility authorized under this chapter.

(j) A site where solid waste generated at either a drinking water treatment facility or a wastewater treatment facility is stored, processed, or treated on site prior to disposal at a solid waste facility authorized under this chapter, and any discharge is regulated pursuant to chapter 2, article 3 of this title.

(k) A closed solid waste landfill where development activities occur on the property or where excavation or removal of solid waste is performed for maintenance and repair provided the following conditions are met:

(i) When the project is completed there will not be an increase in leachate that would result in a discharge.

(ii) When the project is completed the concentration of methane gas will not exceed twenty-five per cent of the lower explosive limit in on-site structures, or the concentration of methane gas will not exceed the lower explosive limit at the property line.

(iii) Protection has been provided to prevent remaining waste from causing any vector, odor, litter or other environmental nuisance.

(iv) The operator provides a notice to the department containing the information required by section 49-762.07, subsection A, paragraphs 1, 2 and 5 and a brief description of the project.

(l) Agricultural on-site disposal as provided in section 49-766.

(m) The use, storage, treatment or disposal of by-products of regulated agricultural activities as defined in section 49-201 and that are subject to best management practices pursuant to section 49-247 or by-products of livestock, range livestock and poultry as defined in section

3-1201, pesticide containers that are regulated pursuant to title 3, chapter 2, article 6 or other agricultural crop residues.

(n) Household hazardous waste collection events held at a temporary site for not more than six days in any calendar quarter.

(o) Wastewater treatment facilities as defined in section 49-1201.

(p) An on-site single family household waste composting facility.

(q) A site at which five hundred or fewer waste tires are stored.

(r) A site at which mining industry off-road waste tires are stored or are disposed of as prescribed by rules in effect on February 1, 1996, until the director by rule determines that on-site recycling methods exist that are technically feasible and economically practical.

(s) A site at which underground piping, conduit, pipe covering or similar structures are abandoned in place in accordance with applicable state and federal laws.

30. "Solid waste landfill" means a facility, area of land or excavation in which solid wastes are placed for permanent disposal. Solid waste landfill does not include a land application unit, surface impoundment, injection well, compost pile or waste pile or an area containing ash from the on-site combustion of coal that does not contain household waste, household hazardous waste or conditionally exempt small quantity generator waste.

31. "Solid waste management" means the systematic administration of activities which provide for the collection, source separation, storage, transportation, transfer, processing, treatment or disposal of solid waste in a manner that protects public health and safety and the environment and prevents and abates environmental nuisances.

32. "Solid waste management plan" means the plan which is adopted pursuant to section 49-721 and which provides guidelines for the collection, source separation, storage, transportation, processing, treatment, reclamation and disposal of solid waste in a manner that protects public health and safety and the environment and prevents and abates environmental nuisances.

33. "Storage" means the holding of solid waste.

34. "Transfer facility" means a site that is owned, operated or used by any person for the rehandling or storage for ninety days or less of solid waste that was generated off site for the primary purpose of transporting that solid waste. Transfer facility includes those facilities that include significant solid waste transfer activities that warrant the facility's regulation as a transfer facility.

35. "Treatment" means any method, technique or process used to change the physical, chemical or biological character of solid waste so as to render that waste safer for transport, amenable for processing, amenable for storage or reduced in volume.

36. "Vegetative waste" means waste derived from plants, including tree limbs and branches, stumps, grass clippings and other waste plant material. Vegetative waste does not include processed lumber, paper, cardboard and other manufactured products that are derived from plant material.

37. "Waste pile" means any noncontainerized accumulation of solid, nonflowing waste that is used for treatment or storage.

38. "Waste tire" does not include tires used for agricultural purposes as bumpers on agricultural equipment or as ballast to maintain covers at an agricultural site, or any tire disposed of using any of the methods in section 44-1304, subsection D, paragraphs 1, 2, 3, 5 through 8 and 11 and means any of the following:

(a) A tire that is no longer suitable for its original intended purpose because of wear, damage or defect.

(b) A tire that is removed from a motor vehicle and is retained for further use.

(c) A tire that has been chopped or shredded.

39. "Waste tire facility" means a solid waste facility at which five thousand or more waste tires are stored outdoors on any day.

49-761. Rule making authority for solid waste facilities; exemption; financial assurance; recycling facilities

A. The department shall adopt rules regarding the storage, processing, treatment and disposal of solid waste as prescribed by subsections B through M of this section. In adopting rules, the department shall consider the nature of the waste streams at the facilities to be regulated. The department shall also consider other applicable federal and state laws and rules in an effort to avoid practices or requirements that duplicate, are inconsistent with or will result in dual regulation with other applicable rules and laws. Facilities that obtain and maintain coverage under a general permit established by the department pursuant to section 49-706 are exempt from rules adopted pursuant to this section. In adopting rules for solid waste facilities, the director may include requirements for corrective actions in response to a release, as defined in section 49-281, from a solid waste facility that violates or results in a violation of any provision of this chapter, rule adopted pursuant to this chapter or solid waste facility plan approved pursuant to this chapter. These rules shall be consistent with section 49-762.08, subsection B, subsection C, paragraphs 1 and 2 and subsections D and E.

B. For purposes of administering 42 United States Code section 6945, as amended November 8, 1984, 40 C.F.R. part 258 is adopted by reference except as prescribed by paragraph 2 of this subsection. This subsection, as it applies to municipal solid waste landfills, governs if there is any conflict between this subsection and any other statute relating to solid waste. Municipal solid waste landfill facility plans submitted pursuant to section 49-762 shall comply with this subsection. In administering this subsection or in adopting or administering any rules adopted pursuant to this subsection, the department shall ensure that any discretion allowed to a director of an approved state pursuant to the federal regulations is maintained. The following apply to the department's administration of 42 United States Code section 6945 and to the department's adoption of rules for municipal solid waste landfills:

1. The department may adopt rules for municipal solid waste landfills. Rules adopted pursuant to this paragraph shall not be more stringent than or conflict with 40 C.F.R. part 258 for nonprocedural standards, except that the department may adopt aquifer protection standards that are more stringent than 40 C.F.R. part 258 if those standards are consistent with and no more stringent than standards developed pursuant to chapter 2, article 3 of this title, or if the standards are adopted pursuant to article 9 of this chapter. Rules adopted pursuant to this paragraph are effective on the concurrence of the administrator with this state's municipal solid waste landfill program.

2. 40 C.F.R. part 258, table I is not adopted in its entirety. The department shall use aquifer water quality standards that have been adopted by the department pursuant to section 49-223 and shall use those portions of table I that are more restrictive than the standards adopted pursuant to section 49-223.

C. The department shall adopt rules for those solid waste land disposal facilities that are not municipal solid waste landfills. Rules adopted pursuant to this subsection shall not be more stringent than or conflict with 40 C.F.R. part 257 for nonprocedural standards, except that the department may adopt aquifer protection standards that are more stringent than 40 C.F.R. part 257 if these standards are consistent with and no more stringent than standards developed pursuant to chapter 2, article 3 of this title, or if the standards are adopted pursuant to article 9 of this chapter. In administering this subsection, the department shall ensure that any discretion allowed to a director of an approved state pursuant to

the federal regulations is maintained in the department's rules. Aquifer protection provisions adopted pursuant to this subsection do not apply to an owner or operator of a solid waste facility if the owner or operator submits an administratively complete application for an aquifer protection permit pursuant to chapter 2, article 3 of this title before the date that the owner or operator is required to submit a solid waste facility plan.

D. The department shall adopt rules to define biohazardous medical waste and to regulate biohazardous medical waste and medical sharps to include all of the following:

1. A definition for biohazardous medical waste that includes wastes that contain material that is likely to transmit etiologic agents that have been shown to cause or contribute to increased human morbidity or mortality of epidemiologic significance. The department shall consult with the department of health services in making this determination.

2. Reasonably necessary rules regarding the storage, collection, transportation, treatment and disposal of biohazardous medical waste and medical sharps, beginning with the placement by the generator of the waste in containers for the purpose of waste collection. The department may require payment of a fee for the licensure of a transporter of biohazardous medical waste. After July 20, 2011, the department shall establish by rule a fee for the licensure of a transporter of biohazardous medical waste, including a maximum fee. As part of the rule making process, there must be public notice and comment and a review of the rule by the joint legislative budget committee. After September 30, 2013, the department shall not increase that fee by rule without specific statutory authority for the increase. The fees shall be deposited, pursuant to sections 35-146 and 35-147, in the solid waste fee fund established by section 49-881. In the case of self-hauling of waste by the generator, all storage facilities under the generator's control and all waste handling practices including storage, treatment and transportation shall be in accordance with these rules. The department shall also adopt reasonably necessary rules regarding the tracking of biohazardous medical waste and medical sharps.

E. The department may adopt reasonably necessary rules regarding the storage, collection, transportation, treatment and disposal of nonbiohazardous medical waste beginning with the placement by the generator of the waste in containers for the purpose of waste collection. In the case of self-hauling of the waste by the generator, all storage facilities under the generator's control and all waste handling practices including storage, treatment and transportation shall be in accordance with these rules.

F. The department shall adopt rules for the application of sludge from a wastewater treatment facility to land for use as fertilizer or beneficial soil amendment. For the purposes of this subsection, "sludge" has the same meaning as sewage sludge as defined in 40 Code of Federal Regulations section 122.2 in effect on January 1, 1998.

G. The department shall adopt rules regarding the storage, processing, treatment or disposal of solid waste at solid waste facilities that are identified in section 49-762.01. The rules shall allow the owner or operator to certify compliance with the department's statutes and rules instead of obtaining a solid waste facility plan approval. The rules shall provide that the applicant at its option may request approval of a solid waste facility plan rather than certifying compliance.

H. The department shall issue by rule best management practices for the classes of solid waste facilities set forth in section 49-762.02.

I. The department shall adopt reasonably necessary rules establishing minimum standards for storing, collecting, transporting, disposing and reclaiming solid waste, including garbage, trash, rubbish, manure and other objectionable wastes. These rules shall provide for inspecting premises,

containers, processes, equipment and vehicles, and for abating as environmental nuisances any premises, containers, processes, equipment or vehicles that do not comply with the minimum standards of these rules. The rules adopted pursuant to this subsection do not apply to sites that are either regulated by section 49-762, 49-762.01 or 49-762.02 or exempted by section 49-701, paragraph 29 or section 49-701.01. Notwithstanding any other provision of this subsection, rules adopted pursuant to this subsection shall apply to defining environmental nuisances pursuant to section 49-141.

J. The department shall adopt rules relating to financial assurance requirements. The rules shall indicate the types of financial assurance mechanisms to be required and the content, terms and conditions of each financial mechanism, including circumstances under which the department may take action on the financial assurance mechanism for facility closure, postclosure care if necessary and corrective action for known releases. The financial assurance mechanisms shall include all of the following:

1. Surety bond.
2. Certificate of deposit.
3. Trust fund with pay-in period.
4. Letter of credit.
5. Insurance policy.
6. Certificate of self-insurance.
7. Deposit with the state treasurer.
8. Evidence of ability to meet any of the following:
 - (a) Corporate financial test.
 - (b) Local government financial test.
 - (c) Corporate guarantee test.
 - (d) Local government guarantee test.
 - (e) Political subdivision financial test that shall require the department to consider the entity's bond rating, income stream, assets, liabilities and assessed valuation of taxable property.
9. Multiple financial assurance mechanisms.
10. Additional financial assurance mechanisms that may be acceptable to the director.

K. The department shall adopt rules that prescribe standards to be used in determining if a site is a recycling facility.

L. The director may adopt rules that prescribe standards to be used in determining if a solid waste facility includes significant solid waste transfer activities that warrant the facility's regulation as a transfer facility.

M. The department shall adopt facility design, construction, operation, closure and postclosure maintenance rules for biosolids processing facilities and household waste composting facilities that must obtain plan approval pursuant to section 49-762.

DEPARTMENT OF TRANSPORTATION

Title 17, Chapter 5, Article 2, Motor Carriers

Amend: R17-5-201, R17-5-202, R17-5-203, R17-5-205, R17-5-206, R17-5-208, R17-5-209,
R17-5-210, R17-5-211, R17-5-212



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - REGULAR RULEMAKING

MEETING DATE: November 2, 2021

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

FROM: Council Staff

DATE: October 8, 2021

SUBJECT: DEPARTMENT OF TRANSPORTATION
Title 17, Chapter 5, Article 2, Motor Carriers

Amend: R17-5-201, R17-5-202, R17-5-203, R17-5-204, R17-5-205,
R17-5-206, R17-5-207, R17-5-208, R17-5-209, R17-5-210,
R17-5-211, R17-5-212

Summary:

This regular rulemaking from the Department of Transportation (Department) seeks to amend rules in Title 17, Chapter 5, Article 2 relating to Commercial Programs. The Department includes a detailed justification for this rulemaking in Item 6 of the Preamble. The Department states multiple purposes for revising the commercial program rules: (1) to incorporate parts of the 2020 edition of the *Code of Federal Regulations*; (2) to remove and amend rules for better consistency and clarity between requirements of interstate and intrastate farm vehicles, as well as between these rules and legislative changes; (3) to remove an unnecessary provision regarding medical waivers; (4) to update the emergency notification process from fax to email; and (5) to clarify language to conform with requirements under Arizona Administrative Procedure Act and the Office of the Secretary of State for rulemaking format and style.

The Department is requesting an immediate effective date for this regular rulemaking to preserve the public peace, health and safety of both interstate and intrastate commercial motor vehicles. The Department states that an immediate effective date would avoid a violation of federal law or regulation of state which require the Department to administer driver licensing and medical evaluation activities, to comply with the Commercial Motor Vehicle Safety Act of 1986,

and to adopt and administer a program for testing and ensuring fitness of commercial motor vehicle operators in accordance with federal standards in 49 CFR 383. The Department also indicates that an immediate effective date would ensure compliance with deadlines in amendments to the Department's governing statutes or federal programs such as the federal Motor Carrier Safety Assistance Program and the Federal Motor Carrier Safety Administration mandates. If the Council approves this rulemaking with an immediate effective date, the Department of Public Safety (DPS) will be eligible to apply for an estimated \$10-12 million in federal funding from the Federal Motor Carrier Safety Administration (FMCSA).

The Department received an exception from Executive Order 2020-02 to initiate this rulemaking on July 16, 2020 and final approval on August 6, 2021.

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

Yes. The Department cites both general and specific statutory authority for this regular rulemaking.

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

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

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

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

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

The Department of Public Safety (DPS) administers and enforces the federal Motor Carrier Safety Assistance Program (MCSAP) throughout the state under these rules. To remain in compliance with federal mandates, the Federal Motor Carrier Safety Administration (FMCSA) requires each state to adopt federal motor carrier safety and hazardous materials regulations that are current within three years.

FMCSA extends annually to DPS a substantial grant under MCSAP for state law enforcement of motor carrier safety and hazardous material programs. A requirement of the grants is to adopt federal regulations into state law. Failure to do so jeopardizes possible future grant funding opportunities.

The Department indicates that the costs associated with compliance arise from the federal law rather than the rulemaking. The Arizona Department of Transportation (ADOT) is statutorily required to administer driver licensing and medical evaluation activities required of commercial motor vehicle drivers under A.R.S. Title 28 and these rules.

Stakeholders include DPS, the Department, counties, municipal law enforcement agencies electing to enforce the provisions locally, privately contracted consultant trainers of law enforcement personnel, motor carriers, and commercial driver license (CDL) applicants and holders.

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

The Department states that each state is required under 49 CFR 384.301 to adopt and carry out a program for testing and ensuring the fitness of individuals to operate commercial motor vehicles consistent with the minimum standards prescribed by the Secretary of Transportation under 49 U.S.C. 31305(a) as soon as practical, or an amount of up to five percent of the state's federal-aid highway funds apportioned under each of sections 104(b)(1), (b)(3), and (b)(4) of 23 U.S.C. may be withheld from the state for noncompliance. The Department states that based on amounts it traditionally receives, this could amount to approximately \$30 million depending on actual appropriations. Therefore, the Department believes that to the extent permitted by federal law, these rules impose the least burden and costs to regulated persons.

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

The Department does not expect this rulemaking to create a significant increase or decrease in costs or benefits to the agency since the rulemaking is generally intended to incorporate by reference an updated version of the federal motor carrier safety and hazardous materials regulations the agency currently has in place.

According to the Department, the costs to businesses arise from the federal law rather than from this rulemaking. The Department goes on to state that the rules support the public interest and the interests of concerned parties by ensuring that all federal motor carrier safety and hazardous material regulations and requirements of motor carriers are uniformly applied and enforced.

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

No. The Department indicates in Item 10 of the Preamble that it made technical, non-substantive changes to the rules between the Notice of Proposed Rulemaking and the Notice of Final Rulemaking. These changes do not result in rules that are "substantially different" pursuant to A.R.S. § 41-1025.

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

Yes. As the Department indicates in Item 11 of the Preamble, it received one comment about this regular rulemaking from a stakeholder, the Arizona Farm Bureau Federation. The Department adequately responded to this comment. Both the comment and the

Department's response thereto are included with the enclosed materials for the Council Members' review.

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

The Department states that the permits issued pursuant to federal regulation and state law qualify as general permits since the activities and practices authorized by them are substantially similar in nature for all holders. Specifically, in order to issue an Intrastate Medical Waiver under R17-5-208, applicable drivers are required to have a commercial learner's permit (CLP) or commercial driver's license CDL and, if applicable, endorsements. The Department complies with A.R.S. § 41-1037.

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

Given a recent statutory change, the Department is authorized to require all CLP and CDL holders to provide their social security numbers (SSN). The Department indicates that pursuant to Laws 2013, Chapter 128, an exemption for the SSN of nonresident CDL applicants was removed from A.R.S. § 28-3158 and reclassified nonresident CDL as nondomiciled CDL. Therefore, this amendment, and the Department's rules, are consistent with other federal laws (42 U.S.C. 405 and 42 U.S.C. 666) that require states to obtain SSNs and the statutory requirement of A.R.S. § 28-3158.

11. **Conclusion**

In this regular rulemaking, the Department seeks to amend the rules regarding commercial programs to: incorporate the 2020 edition of the *Code of Federal Regulations*, improve consistency with other laws, enhance clarity between the requirements of interstate and intrastate farm vehicles, facilitate tracking of poorly rated commercial motor vehicles, remove an unnecessary provision regarding medical waivers, and ensure conformity with the Arizona Administrative Procedure Act and the Office of the Secretary of State's rulemaking format and style requirements. Council staff finds that the Department demonstrates an adequate justification for an immediate effective date pursuant to A.R.S. § 41-1032(A)(2). Council staff recommends approval of this regular rulemaking with an immediate effective date.

August 25, 2021

VIA EMAIL: grrc@azdoa.gov

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

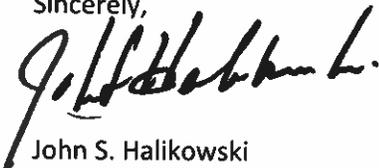
Re: Department of Transportation, 17. A.A.C. 5, Article 2, Regular Rulemaking

Dear Chairperson Nicole Sornsin:

The Arizona Department of Transportation submits the accompanying final rule package for consideration by the Governor's Regulatory Review Council. The following information is provided to comply with R1-6-201(A)(1):

- a. The rulemaking record closed on June 3, 2021, and written public comments were received on these rules;
- b. The rulemaking activity does not relate to a five-year report, but one was completed and approved in April 2021 after this rulemaking began and was taken in consideration;
- c. The rulemaking does not establish a new fee;
- d. The rulemaking does not increase an existing fee;
- e. An immediate effective date is requested for these rules under A.R.S. § 41-1032;
- f. The preamble discloses that the Department did not review any studies relevant to the rules and did not rely on any studies in its evaluation of or justification for the rules;
- g. No new full-time employees are necessary to implement and enforce the rules;
- h. Documents included in this final rule package are as follows:
 1. Signed cover letter;
 2. Notice of Final Rulemaking, including the preamble, table of contents, and text of each rule;
 3. Economic, Small Business and Consumer Impact Statement;
 4. Written comments on the rules received by the agency;
 5. General authorizing statutes and specific statutes, including relevant statutory definitions;
 6. Definitions of terms;
 7. Material incorporated by reference;
 8. Request for, and approval of, the Department's exception from the rulemaking moratorium; and
 9. Final approval of the rules from the Office of the Governor.

Sincerely,



John S. Halikowski
Director

NOTICE OF FINAL RULEMAKING
TITLE 17. TRANSPORTATION
CHAPTER 5. DEPARTMENT OF TRANSPORTATION
COMMERCIAL PROGRAMS

PREAMBLE

<u>1. Article, Part, or Section Affected (as applicable)</u>	<u>Rulemaking Action</u>
R17-5-201	Amend
R17-5-202	Amend
R17-5-203	Amend
R17-5-205	Amend
R17-5-206	Amend
R17-5-208	Amend
R17-5-209	Amend
R17-5-210	Amend
R17-5-211	Amend
R17-5-212	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. §§ 28-366, 28-962, 28-2169, and 28-5204

Implementing statute: A.R.S. §§ 28-3223, 28-5201, 28-5235, 28-5237, and 28-5238

3. The effective date of the rule:

Month X, 2021 (To be completed by the *Register* Editor with an immediate effective date.)

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

The Arizona Department of Transportation (ADOT) requests that this rulemaking be effective immediately on filing with the Office of the Secretary of State, as permitted under A.R.S. § 41-1032, in order to:

Preserve the public peace, health, and safety. These rules incorporate by reference the generally accepted federal standards used by industry and law enforcement personnel to promote safe operation of both interstate and intrastate commercial motor vehicles. ADOT’s Enforcement and Compliance Division and Arizona Department of Public Safety (DPS) officers rely on the rules for guidance when finding issues severe enough to warrant concern for public safety and placing commercial motor vehicles out of service;

Avoid a violation of federal law or regulation or state law. ADOT is statutorily required to administer the driver licensing and medical evaluation activities required of commercial motor

vehicle drivers under A.R.S. Title 28, Chapter 8, and these rules. ADOT is required under A.R.S. § 28-5204(A)(2) to consider, as evidence of generally accepted safety standards, the publications of the United States Department of Transportation (USDOT) and the Environmental Protection Agency when adopting rules necessary to administer and enforce A.R.S. Title 28, Chapter 14. 49 CFR 384 requires that each state comply with the provisions of section 12009(a) of the Commercial Motor Vehicle Safety Act of 1986 (49 U.S.C. 31311(a)), and adopt and administer a program for testing and ensuring the fitness of persons to operate commercial motor vehicles in accordance with the minimum federal standards contained in 49 CFR 383; and

Comply with deadlines in amendments to an agency's governing statutes or federal programs. DPS administers and enforces the federal Motor Carrier Safety Assistance Program (MCSAP) throughout the State of Arizona under these rules. To remain in compliance with federal mandates, the Federal Motor Carrier Safety Administration (FMCSA) requires that each state adopt federal motor carrier safety and hazardous materials regulations that are current to within three years. The last update was to incorporate the 2016 edition of the *Code of Federal Regulations* and was effective May 1, 2018. The possibility exists of either the withholding of, or reduction in, federal funding for the state if these rules are not codified as quickly as possible and places ADOT at risk for the withholding of up to five percent of the state's federal-aid highway funds apportioned under each of sections 104(b)(1), (b)(3), and (b)(4) of 23 U.S.C. Notwithstanding the withholding of funds as described above, FMCSA could prohibit ADOT's Commercial Driver License (CDL) Program from issuing, renewing, transferring, or upgrading CDLs in this state if they determine that Arizona is not substantially in compliance with 49 U.S.C. 31311(a).

As a condition of grant approval under the authority of 49 U.S.C. 31102, as amended, if this rulemaking is approved by the Governor's Regulatory Review Council with an immediate effective date, DPS will be eligible to apply for an estimated \$10 - \$12 million in total federal funding from FMCSA.

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

Not applicable

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

Notice of Rulemaking Docket Opening: 27 A.A.R. 676, April 30, 2021

Notice of Proposed Rulemaking: 27 A.A.R. 649, April 30, 2021

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

Name: Candace Olson, Rules Analyst
Address: Rules and Policy Development
Department of Transportation
206 S. 17th Ave., Mail Drop 180A
Phoenix, AZ 85007
Telephone: (480) 267-6610
E-mail: COlson2@azdot.gov
Web site: <https://azdot.gov/about/government-relations>

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

ADOT, in partnership with DPS, engages in this rulemaking to incorporate parts of the 2020 edition of the *Code of Federal Regulations*. USDOT requires that states adopt federal motor carrier safety and hazardous materials regulations to ensure eligibility for federal enforcement grants. Both ADOT and DPS rely on these federal monies to fund numerous enforcement positions.

R17-5-202(C) is being removed since Laws 2018, Chapter 307, amended the definition of a commercial motor vehicle to not include intrastate vehicles with 26,001 pounds or less, so the tow trucks mentioned in subsection (C) are no longer classified as a commercial motor vehicle and do not need the exemption or need to meet the physical qualifications and examination requirements as detailed.

Due to discussions between DPS and Department law enforcement and public safety officials, a determination has been made to remove the exemption from the federal safety registration and USDOT number requirement in R17-5-203(C) and R17-5-206(B)(1), which allows for better consistency and clarity between the requirements of interstate and intrastate farm vehicles and assist in facilitating tracking and identification of commercial motor vehicles with a poor safety rating.

49 CFR 391 was updated to indicate that drivers with diabetes mellitus treated with insulin for control are physically qualified to operate a commercial motor vehicle and as such a medical waiver is not necessary. In R17-5-208, the Department is removing the provision for an individual with an insulin-dependent diabetic condition as an allowed condition for the Intrastate Medical Waiver.

R17-5-206(B)(2) is being amended for clarification and in keeping with recent legislative changes by changing the reference from A.R.S. § 28-5245 to A.R.S. § 28-5240 in order to better ensure an understanding of the applicable state statute that may apply for noncompliance with the required safety registration and active USDOT number.

The emergency situation notification process prescribed under R17-5-210 is being updated, which includes changing from a faxed form into an email process.

In addition, clarifying and technical changes have been made to ensure consistent language and current citations are used. Changes are also made to ensure conformity to the rulemaking format and style requirements of the Arizona Administrative Procedure Act and the Office of the Secretary of State.

7. A reference to any study relevant to the rule that the agency reviewed and either relied on or did not 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:

ADOT 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:

DPS administers and enforces MCSAP throughout the State of Arizona under these rules. The primary cost bearers in relation to these rules are DPS, ADOT, counties, municipal law enforcement agencies electing to enforce the provisions locally, and privately contracted consultant trainers of law enforcement personnel.

DPS incurs moderate to substantial costs (more than \$10,000) annually for program administration as well as a not readily quantifiable portion of officer salaries for hazardous materials transportation program enforcement. Business entities bear minimal to moderate costs (under \$100,000) in possible federal registration fees, inspection fees, insurance, and equipment to remain in compliance with the rules. However, these costs arise from the federal law rather than from this rulemaking. Minimal administrative costs are borne by independent consultant trainers who educate law enforcement and business entities on rule compliance.

ADOT is statutorily required to administer the driver licensing and medical evaluation activities required of commercial motor vehicle drivers under A.R.S. Title 28 and these rules. ADOT does not expect this rulemaking to create a significant increase or decrease in costs or benefits to the agency since the rulemaking is generally intended to incorporate by reference an updated version of the federal motor carrier safety and hazardous materials regulations that the agency currently has in place. Administrative costs for ADOT should be minimal to moderate.

FMCSA extends annually to DPS a substantial grant under MCSAP for state law enforcement of motor carrier safety and hazardous materials programs. MCSAP funds are distributed chiefly to DPS but may also be sub-allocated to county and municipal enforcement agencies upon application to underwrite local enforcement costs.

Local enforcement cost estimates are difficult to quantify as they are contingent upon whether officers are dedicated to motor carrier and hazardous materials provision enforcement or incorporate motor carrier/hazardous materials enforcement together with other duties. Accordingly, local law enforcement electing to engage in motor carrier and hazardous materials provision enforcement could stand to benefit substantially in cost defrayal through receipt of MCSAP fund allocation by application to DPS, the primary recipient of the MCSAP federal grant monies. For FY 2021, DPS is able to apply for an estimated \$10,000,000 - \$12,000,000 in total federal funding from FMCSA.

To maintain compliance with the provisions of these rules, motor carriers will likely incur moderate costs in the form of equipment, maintenance, insurance, and inspection fees. However, those costs arise from the federal law rather than from this rulemaking. There are no new fees associated with this rulemaking. Under this rulemaking, operators of applicable farm vehicles will need to comply with USDOT safety registration, which does not have a fee, but may have minimal costs for the required markings. If a motor carrier is found to be noncompliant with provisions of these rules, costs of sanctions under A.R.S. § 28-5238 could range from \$1,000 to \$25,000 per citation and the possible loss of a CDL as prescribed under A.R.S. § 28-5238. Benefits to motor carriers remaining in compliance with these rules include increased safety, lower financial responsibility premiums, the opportunity to increase profit margin through better customer service, and more expedient administrative processing by law enforcement.

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

Minor grammatical and non-substantive technical changes for terminology consistencies were made upon review.

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

Company/Individual	Comment	Department’s Response
Arizona Farm Bureau Federation/Chelsea McGuire	R17-5-203(C) and R17-5-206(B)(1): ADOT received comments from the Arizona Farm Bureau indicating that they “do not believe that farm vehicles should be required to obtain an active USDOT number and recommend that this portion of the proposed changes be rejected.” In summary, they provided the following reasons: <ul style="list-style-type: none"> • Poses an unnecessary burden for farm vehicles, which are private and not-for- 	The USDOT safety registration is a unique identifier for motor carriers operating commercial motor vehicles transporting passengers or hauling cargo in commerce that is used to collect and monitor a company’s safety information and collision data throughout the nation. There is no charge to register and obtain a USDOT number and the process is completed online. The only additional regulatory burden is the requirement for the USDOT

	<p>hire.</p> <ul style="list-style-type: none"> • Bring about more confusion for farmers and ranchers. Sometimes, just the size of the vehicle, and that vehicle’s gross vehicle weight rating, will determine whether that truck is a commercial motor vehicle that requires a USDOT number. If a three-quarter ton pickup truck can haul a trailer without needing a USDOT number, it is confusing and unhelpful if a one-ton pickup truck hauling the exact same trailer will need a USDOT number – especially when, as is commonly the case, both the three-quarter and one-ton trucks are also what the farmer relies on for personal use. • Obtaining a USDOT number does not secure any appreciable safety benefit for farm vehicles (as also illustrated with the vehicle size issue). Moreover, light and medium duty farm vehicles, such as the ones in question, already have considerably more safety components precisely because they are also used as personal vehicle. However, we believe that ADOT has in place the tools to do so without requiring farm vehicles to obtain a USDOT number. We have yet to see substantive data that supports the idea that requiring a USDOT number is necessary to improve the safety of operation for farm vehicles. Without such evidence that a change is necessary, we believe that the exemption should remain. • There are several other states in the U.S. with exemptions similar to what Arizona 	<p>number and company name to be displayed on the vehicle while operating in commerce. It is permissible for the markings to be temporarily displayed on vehicles that are only used in commerce on a part-time basis. This information assists the state and our federal partners in providing education and outreach to high risk carriers to reduce collisions and promote highway safety. It also allows enforcement officials to notify carriers of violations through a roadside inspection report, rather than having to resort to issuing citations, which would benefit the farmers.</p> <p>Once a vehicle or combination of vehicles used for the purposes of commerce has a gross vehicle weight rating that meets the definition of a commercial motor vehicle as defined in A.R.S. § 28-5201 it becomes subject to the federal motor carrier safety regulations adopted by ADOT. The removal of the requirement to obtain a USDOT number will not change the confusion and burden over a vehicle’s size and gross vehicle weight rating, as with any other commercial motor vehicle operating in the state, and it does not exempt the applicable farm vehicle from complying with the rest of the applicable federal motor carrier safety regulations. There are numerous agricultural exemptions afforded to the industry, most notably under the Moving Ahead for Progress in the 21st Century Act (MAP-21) which provided exemptions for covered farm vehicles from</p>
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	<p>currently has in place including: Iowa, Minnesota, Montana, and Louisiana. Maintaining the farm vehicle exemption does not jeopardize the integrity of Arizona’s transportation rules.</p>	<p>many of the federal regulations under 49 CFR Parts 382, 383, 391 (Subpart E), 395, and 396. There are no exemptions from 49 CFR Parts 390 or 392 which contain the requirements for USDOT safety registration. DPS has provided outreach to the Arizona Farm Bureau, as well as others in the transportation sector, to enhance understanding and compliance through education.</p> <p>Statistical data shows USDOT safety registration has a direct correlation to overall safety in transportation. The Commercial Vehicle Safety Alliance’s <i>North American Standard Out-of-Service Criteria</i> establishes egregious violations that must be declared out of service which “would be likely to cause a crash or breakdown.” Nationwide in 2020 there was a significant increase in out-of-service violations for motor carriers that did not have a USDOT safety registration when compared to motor carriers with a USDOT safety registration. The nationwide out-of-service rates for all commercial drivers was 5%, however, 20% of inspections involving motor carriers without a USDOT safety registration resulted in the driver being placed out of service. The overall percentage of vehicles placed out of service was 20%, however, 43% of commercial vehicles without a USDOT safety registration were placed out of service. In addition to the safety aspect, out-of-service drivers and vehicles negatively impact Arizona’s economy and impede commerce.</p>
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		<p>While having a vehicle with safety components is an important factor, there is an increased risk with commercial motor vehicles and their greater impact on the safety of the public and the roads. FMCSA's primary mission is to prevent commercial motor vehicle-related fatalities and injuries. The State of Arizona partners with USDOT through MCSAP to assist in enhancing highway safety and reducing collisions and in doing so receives considerable grant funding. All states that participate in the MCSAP program are required to adopt and enforce laws, regulations, standards, or orders on commercial motor vehicle safety that, as applicable to intrastate commerce not involving the transportation of hazardous materials, are identical to or have the same effect as the FMCSRs or fall within the limited variances from the FMCSRs allowed under 49 CFR 350.305 or 350.307. ADOT, in consultation with DPS, has determined that by exempting specific industries from USDOT safety registration, Arizona becomes at risk of being deemed noncompliant with the compatibility requirements and risks losing MCSAP grant funding. The requirement for USDOT safety registration and a USDOT number ensures compatibility, a consistency in regulations applying to both interstate and intrastate commercial motor vehicles which may help streamline and reduce a potential burden for industry to have to make at least that distinction, and inclusion in a reliable</p>
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		means of gathering information and providing that safety data.
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12. All agencies shall list other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:

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

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

These rules incorporate by reference federal regulations, which are consistent with state statutes, the requirements of a commercial learner’s permit (CLP), CDL, and endorsements. In addition, R17-5-208 provides for the issuance of an Intrastate Medical Waiver, and in keeping with state statute, requires applicable drivers to have a CLP or CDL and, when applicable, endorsements. These are general permits since the activities and practices authorized by them are substantially similar in nature for all holders.

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 regulations in 49 CFR 40, 107, 171, 172, 173, 177, 178, 180, 379, 382, 383, 385, 390, 391, 392, 393, 395, 396, 397, and 399 are applicable to the rules. R17-5-205(E)(2) amends 49 CFR 383.153(e) by removing the exception for a nondomiciled CLP or CDL holder who is domiciled in a foreign jurisdiction for providing the holder’s social security number (SSN) on the application. Pursuant to Laws 2013, Chapter 128, the exemption for the SSN of nonresident CDL applicants was removed from A.R.S. § 28-3158, which also reclassified nonresident CDL as nondomiciled CDL. This change authorizes ADOT to require all CLP and CDL holders to provide their SSNs. This amendment is consistent with other federal laws (42 U.S.C. 405 and 42 U.S.C. 666) that require states to obtain SSNs and the statutory requirement of A.R.S. § 28-3158.

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

No analysis was submitted to ADOT

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

In R17-5-202: 49 CFR 40, 379, 382, 383, 385, 390, 391, 392, 393, 395, 396, 397, and 399, revised as of October 1, 2020

In R17-5-209: 49 CFR 107, 171, 172, 173, 177, 178, and 180, revised as of October 1, 2020

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 17. TRANSPORTATION
CHAPTER 5. DEPARTMENT OF TRANSPORTATION
COMMERCIAL PROGRAMS

ARTICLE 2. MOTOR CARRIERS

Section

- R17-5-201. Definitions
- R17-5-202. Motor Carrier Safety: Incorporation of Federal Regulations; Applicability
- R17-5-203. Motor Carrier Safety: 49 CFR 390 - Federal Motor Carrier Safety Regulations; General
- R17-5-205. Motor Carrier Safety: 49 CFR 383 - Commercial Driver's License Standards; Requirements and Penalties
- R17-5-206. Motor Carrier Safety: 49 CFR 392 - Driving of Commercial Motor Vehicles
- R17-5-208. Commercial Driver License Intrastate Medical Waiver; Intrastate Alternative Physical Qualification Standards for the Loss or Impairment of Limbs, ~~an Insulin-Dependent Diabetic Condition,~~ or Monocular Vision
- R17-5-209. Hazardous Materials Transportation: Incorporation of Federal Regulations; Applicability
- R17-5-210. Motor Carrier Safety: Public Service Corporation, Political Subdivision of this State that is Engaged in Rendering Public Utility Service, or Railroad Contacting State Officials in an Emergency
- R17-5-211. Motor Carrier Safety: Inspection, Enforcement, and Sanction
- R17-5-212. Motor Carrier Safety: Hearing Procedure

ARTICLE 2. MOTOR CARRIERS

R17-5-201. Definitions

In addition to the definitions provided under A.R.S. §§ 28-3001 and 28-5201, the following definitions apply to this Article unless otherwise specified:

“Audit” means any inspection of a transporter’s motor vehicle, equipment, books, or records to determine compliance with this Article and A.R.S. Title 28, Chapter 14.

“Co-applicant” means an employer or potential employer.

“Danger to public safety” means any condition of a transporter likely to result in serious peril to the public if not discontinued immediately.

“Director” means the Director of the Arizona Department of Transportation or the Director’s designated agent.

“Executive Hearing Office” means the Arizona Department of Transportation’s Executive Hearing Office.

“Medical waiver evaluation summary” means the form, provided by the Department, to be completed by either a ~~board-qualified~~ board-qualified or ~~board-certified~~ board-certified orthopedic surgeon or physiatrist and mailed to the Department, at the address provided on the form, on behalf of an Arizona intrastate medical waiver applicant.

“Physiatrist” means a doctor of medicine specialized in physical medicine and rehabilitation.

“Transporter” means any person, driver, motor carrier, shipper, manufacturer, or motor vehicle, including any motor vehicle transporting a hazardous material, hazardous substance, or hazardous waste, subject to this Article and A.R.S. Title 28, Chapter 14.

“Violation” means any conduct, act, or failure to act required or prohibited under this Article and A.R.S. Title 28, Chapter 14.

“Vision examination report” means a form provided by the Department to be completed by an ophthalmologist or a licensed optometrist on behalf of a driver or driver applicant and mailed to the Department, at the address provided on the form, for use in determining whether or not a medical condition affects the driver’s, or driver applicant’s, ability to safely perform the functional skills involved with driving a motor vehicle.

R17-5-202. Motor Carrier Safety: Incorporation of Federal Regulations; Applicability

- A. The Department incorporates by reference 49 CFR 40, 379, 382, 383, 385 (~~except 385.301, 385.303, 385.305, 385.329, 385.405, 385.409, 385.419, 385.421, 385.603, 385.607, 385.609, and 385.713~~), 390 (~~except 390.3, 390.5, 390.19, 390.21, 390.40, and subpart E~~), 391, 392, 393, 395, 396, 397, and 399, revised as of October 1, ~~2016~~ 2020, and no later amendments or editions, as amended under this Article. ~~The Department incorporates by reference 49 CFR 385.301T, 385.303T, 385.305T, 385.329T, 385.405T, 385.409T, 385.419T, 385.421T, 385.603T, 385.607T, 385.609T, 385.713T, 390.3T, 390.5T, 390.19T, 390.21T, 390.40T, and 390.200T, as published in 82 FR 5292, January 17, 2017, and no later amendments or editions, as amended under this Article.~~ The incorporated material is on file with the Department at 206 S. 17th Avenue, Phoenix, AZ 85007. The incorporated material is published by National Archives and Records Administration, Office of the Federal

Register, 8601 Adelphi Road, College Park, MD 20740-6001, and is printed and distributed by the U.S. Government Publishing Office, P.O. Box 979050, St. Louis, MO 63197-9000. The incorporated material can be viewed online at <http://www.ofr.gov> or <https://www.gpo.gov/fdsys> <https://www.govinfo.gov> and ordered online by visiting the U.S. Government Online Bookstore at <http://bookstore.gpo.gov>. The International Standard Book Numbers are ~~9780160935459~~ 9780160958786 for 49 CFR 40 and ~~9780160935497~~ 9780160958823 for 49 CFR 379, 382, 383, 385, 390, 391, 392, 393, 395, 396, 397, and 399.

- B. The sections of 49 CFR incorporated under subsection (A) apply as amended under this Article to all intrastate and interstate motor carriers operating in Arizona and persons operating a commercial motor vehicle, ~~except as provided under subsection (C).~~
- C. ~~The intrastate operator of a tow truck with a gross vehicle weight rating of 26,000 pounds or less is exempt from the requirements of 49 CFR 390 through 399, except that the driver is subject to the physical qualifications and examination requirements of 49 CFR 391, subpart E.~~

R17-5-203. Motor Carrier Safety: 49 CFR 390 - Federal Motor Carrier Safety Regulations; General

- A. 49 CFR 390.3T, General applicability. Paragraph ~~(a)~~ (a)(1) is amended to read:

Regulations incorporated in this subchapter are applicable to all motor carriers operating in Arizona and any vehicle owned or operated by the state, a political subdivision, or a state public authority that is used to transport a hazardous material in an amount requiring the vehicle to be placarded as prescribed under R17-5-209.
- B. 49 CFR 390.5T, Definitions. The definitions listed under 49 CFR 390.5T are amended as follows:

“Commercial Motor Vehicle” or “CMV” has the same meaning as ~~prescribed under~~ defined in A.R.S. § 28-5201.

“Shipper” has the same meaning as ~~prescribed under~~ defined in A.R.S. § 28-5201.

“Special agent” means an officer or agent of the Department, the Department of Public Safety, or a political subdivision, who is trained and certified by the Department of Public Safety to enforce Arizona’s Motor Carrier Safety requirements.

“State” means a state of the United States or the District of Columbia.

“Tow truck,” as used in the definition of emergency under 49 CFR ~~390.5~~ 390.5T, has the same meaning as ~~prescribed under~~ defined in A.A.C. R13-3-701.
- C. 49 CFR 390.19T, Motor carrier, hazardous material safety permit applicant/holder, and intermodal equipment provider identification reports ~~for certain Mexico-domiciled motor carriers~~. Paragraph (a)(1) is amended to read:

A U.S.-, Canada-, Mexico-, or non-North America-domiciled motor carrier conducting operations in interstate commerce or in intrastate commerce in a CMV, ~~except for intrastate commerce in a farm vehicle as defined under A.R.S. § 28-2514,~~ must file a Motor Carrier Identification Report, Form MCS-150.

D. 49 CFR 390.23, Relief from regulations.

1. Paragraph (a)(2), Local emergencies, is amended by adding:

When a local emergency exists that justifies an exemption from parts 390 through 399 of this chapter, a motor carrier may request the exemption by contacting Commercial Vehicle Enforcement at the Arizona Department of Public Safety, Highway Patrol Division, P.O. Box 6638, Phoenix, AZ 85005. The Arizona Department of Public Safety may grant the exemption with or without restrictions as necessary to provide vital service to the public.

2. Paragraph (a)(2)(i)(A) is amended to read:

An emergency has been declared by a federal, state or local government official having authority to declare an emergency; or an emergency situation exists under A.R.S. § 28-5234(B); or

E. 49 CFR 390.25, Extension of relief from regulations - emergencies, is amended by adding:

A motor carrier seeking to extend a period of relief from these regulations may request the extension by contacting Commercial Vehicle Enforcement at the Arizona Department of Public Safety, Highway Patrol Division, P.O. Box 6638, Phoenix, AZ 85005. The Arizona Department of Public Safety may grant the extension with any restrictions it considers necessary to provide vital service to the public.

R17-5-205. Motor Carrier Safety: 49 CFR 383 - Commercial Driver's License Standards; Requirements and Penalties

A. 49 CFR 383.5, Definitions. The definitions listed under 49 CFR 383.5 are amended as follows:

“Commercial motor vehicle” or “CMV” has the same meaning as ~~prescribed under~~ defined in A.R.S. § 28-3001.

“Conviction” has the same meaning as ~~prescribed under~~ defined in A.R.S. § 28-3001.

“Disqualification” has the same meaning as ~~prescribed under~~ defined in A.R.S. § 28-3001.

“Motor vehicle” has the same meaning as ~~prescribed under~~ defined in A.R.S. § 28-101.

“Out-of-service order” has the same meaning as ~~prescribed under~~ defined in A.R.S. § 28-5241.

“School bus” has the same meaning as ~~prescribed under~~ defined in A.R.S. § 28-101.

“Tank vehicle” has the same meaning as ~~prescribed under~~ defined in A.R.S. § 28-3103.

B. 49 CFR 383.71, Driver application and certification procedures. Paragraphs (b)(1)(ii), Excepted interstate, and (b)(1)(iv), Excepted intrastate, are deleted.

C. 49 CFR 383.73, State procedures.

1. Paragraph (c)(4) is amended to read:

If such applicant wishes to retain a hazardous materials endorsement, require compliance with standards for such endorsement specified in §§ 383.71(b)(8) and 383.141 and ensure that the driver has successfully completed a new test for such endorsement specified in § 383.121.

2. Paragraphs (c)(4)(i) and (c)(4)(ii) are deleted.

3. Paragraph (f)(2)(ii) is amended to read:

The state must add the word “non-domiciled” to the face of the CLP or CDL, in accordance with § 383.153(c) or “limited-term” to the face of the CLP or CDL, in accordance with 6 CFR 37.21; and

- D. 49 CFR 383.75, Third party testing. Paragraph (a)(8)(v) is amended to read:
Require the third party tester to initiate and maintain a bond in an amount pursuant to A.R.S. Title 28, Chapter 13 to be sufficient to pay for re-testing drivers in the event that the third party or one or more of its examiners is involved in fraudulent activities related to conducting skills testing of applicants for a CDL. Exception: A third party tester that is a government entity is not required to maintain a bond. A provider exempted under A.R.S. Title 28, Chapter 13, is responsible for all costs associated with all re-testing of applicants due to examination fraud as determined by the Department.
- E. 49 CFR 383.153, Information on the CLP and CDL documents and applications. The introductory sentence in paragraph (e) is amended to read:
Before a CLP or CDL may be issued:

R17-5-206. Motor Carrier Safety: 49 CFR 392 - Driving of Commercial Motor Vehicles

- A. 49 CFR 392.5, Alcohol prohibition. Paragraph (e) is amended by adding:
Drivers who violate the terms of an out-of-service order as prescribed under this section are also subject to the provisions and sanctions of A.R.S. § 28-5241.
- B. 49 CFR 392.9b, Prohibited transportation.
 - 1. Paragraph (a) is amended to read:
Safety registration required. A commercial motor vehicle providing transportation in interstate commerce or in intrastate commerce, ~~except for intrastate commerce in a farm vehicle as defined under A.R.S. § 28-2514,~~ must not be operated without a safety registration and an active USDOT Number.
 - 2. Paragraph (b), Penalties, is amended to read:
Penalties. If it is determined that the motor carrier responsible for the operation of such a vehicle is operating in violation of paragraph (a) of this section, it may be subject to penalties in accordance with 49 U.S.C. 521 ~~for interstate commerce~~ and A.R.S. § 28-5245 ~~28-5240 for intrastate commerce.~~

R17-5-208. Commercial Driver License Intrastate Medical Waiver; Intrastate Alternative Physical Qualification Standards for the Loss or Impairment of Limbs, ~~an Insulin-Dependent Diabetic Condition,~~ or Monocular Vision

- A. A person who is not physically qualified to drive a commercial motor vehicle in ~~interstate~~ intrastate commerce due to loss of limb, limb impairment, ~~an insulin-dependent diabetic condition,~~ or monocular vision, as provided under 49 CFR 391.41(b)(1), (b)(2), ~~(b)(3),~~ or (b)(10), but otherwise meets all other requirements under 49 CFR 391.41, may operate a commercial motor vehicle in intrastate commerce if granted an intrastate medical waiver by the Director. Application for an intrastate medical waiver shall be submitted according to subsection (B).
- B. A driver applicant, or a driver applicant jointly with the motor carrier co-applicant that will employ the driver applicant, shall complete and submit the applicable intrastate medical waiver application to the Department's Medical Review Program, P.O. Box 2100, Mail Drop 818Z, Phoenix, AZ 85001-2100, with the following information as applicable:

1. Identify the applicant:
 - a. Name and complete address of the driver applicant;
 - b. Name and complete address of the motor carrier co-applicant;
 - c. U.S. Department of Transportation motor carrier identification number, if known; and
 - d. A description of the driver applicant's limb or visual impairment ~~or insulin dependent diabetic condition~~ as applicable to the type of waiver being requested;
2. Describe the type of operation the driver applicant will be employed to perform, including the following information (if known):
 - a. Average period of time the driver will be driving or on duty, per day;
 - b. Type of commodities or cargo to be transported;
 - c. Type of driver operation (i.e., sleeper team, relay, owner operator, etc.); and
 - d. Number of years experience operating each type of commercial motor vehicle requested in the intrastate medical waiver application and total years of experience operating all types of commercial motor vehicles;
3. Describe the commercial motor vehicles the driver applicant intends to drive:
 - a. Truck, truck tractor, or bus make, model, and year (if known);
 - b. Drive train:
 - i. Transmission type (automatic or manual - if manual, designate number of forward speeds);
 - ii. Auxiliary transmission (if any) and number of forward speeds; and
 - iii. Rear axle (designate single speed, two-speed, or three-speed);
 - c. Type of brake system;
 - d. Steering, manual or power assisted;
 - e. Description of types of trailers (i.e., van, flatbed, cargo tank, drop frame, lowboy, or pole);
 - f. Number of semitrailers or full trailers to be towed at one time;
 - g. For commercial motor vehicles designed to transport passengers, indicate the seating capacity of the commercial motor vehicle; and
 - h. Description of any modifications made to the commercial motor vehicle for the driver applicant, attach photographs where applicable;
4. Include a certification statement:
 - a. The driver applicant shall certify that the driver applicant is otherwise qualified to drive a commercial motor vehicle under the regulations of 49 CFR 391 as adopted by the Department; and
 - b. In case of a co-applicant, the co-applicant motor carrier shall certify that the driver applicant is otherwise qualified to drive a commercial motor vehicle under the regulations of 49 CFR 391 as adopted by the Department; and
5. Contain signature of each applicant and date signed:
 - a. The driver applicant's signature; and
 - b. The motor carrier official's signature and title if the application has a co-applicant. Depending on the

motor carrier's organizational structure (corporation, partnership, or proprietorship), the signer of the application shall be an officer, partner, or the proprietor.

- C. The completed intrastate medical waiver application for a driver applicant not physically qualified to drive under 49 CFR 391.41(b)(1) or (b)(2) shall be accompanied by:
1. A copy of the medical examination report and medical examiner's certificate completed pursuant to 49 CFR 391.43;
 2. The Department's medical waiver evaluation summary completed by either a board-qualified or board-certified psychiatrist or orthopedic surgeon. The co-applicant motor carrier or the driver applicant shall provide the psychiatrist or orthopedic surgeon with a description of the job-related tasks the driver applicant will be required to perform:
 - a. The medical waiver evaluation summary for a driver applicant not physically qualified to drive under 49 CFR 391.41(b)(1) shall include:
 - i. An assessment of the functional capabilities of the driver as they relate to the ability of the driver to perform normal tasks associated with operating a commercial motor vehicle; and
 - ii. A statement by a board-qualified or board-certified psychiatrist or orthopedic surgeon that the applicant is capable of demonstrating precision prehension (e.g., manipulating knobs and switches) and power grasp prehension (e.g., holding and maneuvering the steering wheel) with each upper limb separately;
 - b. The medical waiver evaluation summary for a driver applicant not physically qualified to drive under 49 CFR 391.41(b)(2) shall include:
 - i. An explanation as to how and why the impairment interferes with the ability of the applicant to perform normal tasks associated with operating a commercial motor vehicle;
 - ii. An assessment and medical opinion of whether the condition will likely remain medically stable over the lifetime of the driver applicant; and
 - iii. A statement by a board-qualified or board-certified psychiatrist or orthopedic surgeon that the applicant is capable of demonstrating precision prehension (e.g., manipulating knobs and switches) and power grasp prehension (e.g., holding and maneuvering the steering wheel) with each upper limb separately;
 3. A description of the driver applicant's prosthetic or orthotic device worn, if any; and
 4. A copy of the driver applicant's state motor vehicle driving record for the past three years from each state in which a motor vehicle driver license or permit has been obtained.
- ~~D. The completed intrastate medical waiver application for a driver applicant not physically qualified to drive under 49 CFR 391.41(b)(3) shall be accompanied by:~~
- ~~1. A copy of the medical examination report and medical examiner's certificate completed pursuant to 49 CFR 391.43;~~
 - ~~2. An evaluation by a board certified or board eligible endocrinologist. A complete endocrinologist evaluation shall consist of:~~

- a. ~~A comprehensive evaluation of the applicant's five year medical history and current status. The applicant shall provide the examining endocrinologist with a complete medical history as it pertains to the applicant's diabetes or its complications or both, including, the date insulin use began, all hospitalization reports, consultation notes for diagnostic examinations, special studies, follow up reports, reports of any hypoglycemic insulin reactions within the 12 months prior to the date of application, and other reports as requested by the endocrinologist. The evaluation shall also include a review of:
 - i. ~~Daily glucose monitoring logs, glycosylated hemoglobin (A1c) indicating a result in the range of 7% to 10%, including lab reference page performed during the last six months unless recently diagnosed;~~
 - ii. ~~Insulin dosages and types, diet utilized for control, and all medications taken; and~~
 - iii. ~~Examinations to detect any peripheral neuropathy or circulatory insufficiency of the extremities;~~~~
 - b. ~~A statement that the applicant is free from insulin reactions. Insulin reactions include any severe hypoglycemic reaction, which can be a reaction that results in seizure, loss of consciousness, requiring the assistance of another person, or a period of impaired cognitive function that occurs without warning. To be eligible the applicant must not have hypoglycemia unawareness and must have had no more than one documented severe hypoglycemic reaction in the previous 12 months and must have had:
 - i. ~~No recurrent (two or more) severe hypoglycemic reactions resulting in a loss of consciousness or seizure within the past five years;~~
 - ii. ~~No recurrent severe hypoglycemic reactions requiring the assistance of another person within the past five years;~~
 - iii. ~~No recurrent severe hypoglycemic reactions resulting in impaired cognitive functions that occurred without warning symptoms within the past five years; and~~
 - iv. ~~A period of one year of demonstrated stability following the first period of severe hypoglycemia;~~~~
 - e. ~~A statement prepared and signed by the examining endocrinologist whose status as board certified or board eligible is indicated. The signed statement shall include separate declarations indicating the following medical determinations:
 - i. ~~The endocrinologist is familiar with the applicant's medical history for the past five years through a records review, treating the patient, or consultation with the treating physician;~~
 - ii. ~~The applicant is able to safely operate a commercial motor vehicle while using insulin; and~~
 - iii. ~~The applicant has been educated in diabetes, including the last education date, and its management and is informed of and understands how to individually manage and monitor the applicant's diabetes mellitus and has demonstrated the ability and willingness to properly monitor and manage the applicant's diabetes and procedures to follow if complications arise;~~~~
3. ~~A separate signed vision evaluation report from an ophthalmologist or optometrist indicating that the applicant has been examined and does not have diabetic retinopathy and meets the vision standard of 49~~

~~CFR 391.41(b)(10), or has been issued a valid intrastate medical waiver for monocular vision. If the applicant has any evidence of diabetic retinopathy, the applicant must be examined by an ophthalmologist and submit a separate signed statement from the ophthalmologist that the applicant does not have unstable proliferative diabetic retinopathy (i.e. unstable advancing disease of blood vessels in the retina); and~~

- ~~4. A copy of the driver applicant's state motor vehicle driving record for the past three years from each state in which a motor vehicle driver license or permit has been obtained.~~

F.D. The completed intrastate medical waiver application for a driver applicant not physically qualified to drive under 49 CFR 391.41(b)(10) shall be accompanied by:

1. A copy of the medical examination report and medical examiner's certificate completed pursuant to 49 CFR 391.43;
2. A current vision examination report issued within the last 90 days from the date the report is received by the Department, completed by an ophthalmologist or optometrist. The report shall indicate that the applicant has distant visual acuity of at least 20/40 (Snellen), with or without a corrective lens, in one eye, and the applicant's dominant eye has a visual field of at least 70° peripheral measurement in one direction and 35° in the opposite direction of the horizontal meridian and the ability to distinguish the colors of a traffic signal or device showing standard red, green, and amber, as applicable to the type of medical waiver being requested;
3. A copy of the driver applicant's state motor vehicle driving record for the past three years from each state in which a motor vehicle driver license or permit has been obtained; and
4. A statement from the employer that the driver applicant has driven the type of vehicle for which the waiver is being requested for at least two of the previous five years.

F.E. Agreement. A motor carrier that employs a driver subject to an intrastate medical waiver granted by the Director under subsection (A), whether the waiver was granted unilaterally to the driver, or to the driver and co-applicant motor carrier, shall agree to:

1. Report to the Department's Medical Review Program, P.O. Box 2100, Mail Drop 818Z, Phoenix, AZ 85001-2100, in writing, any suspension, revocation, disqualification, or withdrawal of the subject driver's driver license or permit, and any accident, arrest, or conviction involving the driver within 30 days after the occurrence;
2. Provide to the Department's Medical Review Program, on request, any documents and information pertaining to the driving activities, accidents, arrests, convictions, and driver license or permit suspensions, revocations, disqualifications, or withdrawals involving the subject driver;
3. Evaluate the subject driver with a road test using the trailer types the motor carrier intends the driver to transport, or alternatively accept a certificate of a trailer road test from another motor carrier if the trailer types are similar, or accept the trailer road test completed during the skill performance evaluation if trailer types are similar to that of the prospective motor carrier;
4. Evaluate the subject driver for those non-driving safety related job tasks associated with each type of trailer that will be used and any other non-driving safety related or job related tasks unique to the operations of the

employing motor carrier; and

5. Use the subject driver to operate the type of commercial motor vehicle indicated on the intrastate medical waiver only when the driver is in compliance with the conditions and limitations of the waiver.

G.F. A driver subject to an intrastate medical waiver, issued by the Director under subsection (A), shall supply each employing motor carrier with a copy of the intrastate medical waiver.

H.G. The Department may require the driver applicant to demonstrate the driver applicant's ability to safely operate the commercial motor vehicle the driver intends to drive.

I.H. If required by the Department during the application process, a driver applicant shall have a skill performance evaluation performed by a federally-certified state commercial driver license examiner at a Department commercial driver license facility when directed.

J.I. If the Director grants an intrastate medical waiver under subsection (A) to the driver applicant, the Department shall mail to the driver applicant and co-applicant motor carrier (if applicable) written approval of the intrastate medical waiver describing the terms, conditions, and limitations of the waiver.

K.J. The intrastate medical waiver granted by the Director under subsection (A) shall identify:

1. The power unit (bus, truck, truck tractor) for which the waiver is granted; and
2. The trailer type used in the skill performance evaluation, if applicable, without limiting the waiver to that specific trailer type.

L.K. A subject driver may use the intrastate medical waiver with other trailer types if the driver successfully completes:

1. A trailer road test administered by the motor carrier under subsection ~~(F)(3)~~ (E)(3) for each type of trailer, and
2. A non-driving safety related or job related task evaluation administered by the motor carrier under subsection ~~(F)(4)~~ (E)(4).

M.L. The intrastate medical waiver granted by the Director under subsection (A) is:

1. Valid for a period of not more than two years from the date of issuance;
2. Renewable 30 days prior to the expiration date; and
3. Transferable from an original motor carrier co-applicant employer to a new motor carrier employer or to the subject driver, as a unilateral applicant if becoming self-employed, upon written notification to the Department's Medical Review Program, P.O. Box 2100, Mail Drop 818Z, Phoenix, AZ 85001-2100, stating the new employer's name and the type of equipment to be driven.

N.M. An intrastate medical waiver granted by the Director under subsection (A) to a driver applicant for monocular vision under subsection ~~(E)~~ (D), shall prohibit the subject driver from transporting:

1. Passengers for hire; and
2. Reportable quantities of hazardous substances, manifested hazardous wastes, and hazardous material required to be placarded.

O.N. A driver subject to an intrastate medical waiver, issued by the Director under subsection (A), shall have the intrastate medical waiver (or a legible copy) in the subject driver's possession while on duty.

~~P.O.~~ The motor carrier employing a subject driver shall maintain a copy of the intrastate medical waiver in its driver qualification file and retain the copy in the motor carrier's file for a period of three years after the driver's employment is terminated.

~~Q.~~ A driver subject to an intrastate medical waiver, issued by the Director under subsection (A) to an applicant for insulin dependent diabetes under subsection (D), must comply with the following conditions:

- ~~1. Maintain appropriate medical supplies for glucose management while preparing for the operation of a commercial motor vehicle and during its operation. The supplies shall include the following:
 - ~~a. A digital glucose monitor with computerized memory;~~
 - ~~b. Supplies needed to obtain adequate blood samples and to measure blood glucose;~~
 - ~~c. Insulin to be used as necessary; and~~
 - ~~d. An amount of rapidly absorbable glucose to be used as necessary;~~~~
- ~~2. Maintain a daily record of actual driving time to correlate with the daily glucose measurements;~~
- ~~3. Monitor and maintain blood glucose levels in the range of 100 to 400 milligrams per deciliter (mg/dl) prior to and while driving.
 - ~~a. Check glucose before starting to drive and take corrective action if necessary. If glucose is less than 100 mg/dl, take glucose or food and recheck in 30 minutes. Repeat the process until glucose is greater than 100 mg/dl. Do not drive if glucose is less than 100 mg/dl;~~
 - ~~b. While driving, stop the vehicle in a safe location and check glucose every two to four hours and take appropriate action to maintain it in the range of 100 to 400 mg/dl;~~
 - ~~c. Have food available at all times when driving. If glucose is less than 100 mg/dl, stop driving and eat. Recheck in 30 minutes and repeat procedure until glucose is greater than 100 mg/dl; and~~
 - ~~d. If glucose is greater than 400 mg/dl, stop driving until glucose returns to the 100 to 400 mg/dl range. If more than two hours have passed since last insulin injection and eating, take additional insulin. Recheck blood glucose in 30 minutes. Do not resume driving until glucose is less than 400 mg/dl;~~~~
- ~~4. Participate in a diabetes education program annually;~~
- ~~5. Undergo the following evaluations and examinations and submit to the Department's Medical Review Program, P.O. Box 2100, Mail Drop 818Z, Phoenix, AZ 85001 2100, within 10 days of the date of the evaluation or exam:
 - ~~a. A quarterly evaluation completed by a board certified or board eligible endocrinologist. A quarterly endocrinologist evaluation shall include a review of the driver's daily glucose logs and glucose levels (from the subject driver's required monitoring device), a comparison of monitoring dates to the driving log to ensure that the subject driver is checking glucose levels prior to operating a commercial motor vehicle, a certifying statement indicating that the subject driver is maintaining a glucose level in the range of 100 to 400 mg/dl while driving a commercial motor vehicle, a certifying statement indicating that the subject driver is maintaining a stable insulin regimen and that the subject driver's quarterly A1c result continues to reflect stable control, reports of any severe hypoglycemic episodes, any hypoglycemic related hospitalization, and any treatment regimen changes since the last hypoglycemic~~~~

episode;

- b. ~~An annual evaluation completed by a board certified or board eligible endocrinologist. In addition to the requirements of a quarterly endocrinologist evaluation under subsection (Q)(5)(a), an annual endocrinologist evaluation shall also include a general physical examination, an indication that the driver has continued to participate in a diabetes education program with the last education date provided, a certifying statement indicating that the driver understands how to individually manage and monitor the driver's diabetes mellitus, an indication of the development of, or progression, or both, in diabetes complications (i.e. renal disease, cardiovascular disease, and neurological disease), a list of all medications taken and whether any of the medications may compromise the driver's ability to operate a commercial motor vehicle, the endocrinologist's belief that the driver has demonstrated the ability and willingness to properly manage the driver's diabetes, and a certifying statement indicating that the driver is able to safely operate a commercial motor vehicle while using insulin;~~
 - e. ~~An annual vision evaluation report, as prescribed under subsection (D)(3). If there is any evidence of diabetic retinopathy, provide annual documentation by an ophthalmologist that the driver does not have unstable proliferative diabetic retinopathy; and~~
 - d. ~~An annual medical examination report and medical examiner's certificate completed pursuant to 49 CFR 391.43. Provide copies of the endocrinologist evaluation and the vision evaluation report to the medical examiner for review; and~~
6. Report the following information to the Department's Medical Review Program, P.O. Box 2100, Mail Drop 818Z, Phoenix, AZ 85001-2100, within two days of occurrence;
- a. All episodes of severe hypoglycemia, significant complications, or inability to manage diabetes; and
 - b. Any involvement in an accident or any other adverse event in a commercial motor vehicle or personal vehicle, related to an episode of hypoglycemia or hyperglycemia.

R.P. A driver subject to an intrastate medical waiver, issued by the Director under subsection (A) to an applicant for monocular vision under subsection ~~(E)~~ (D), must be physically examined every year and shall submit the following to the Department's Medical Review Program, P.O. Box 2100, Mail Drop 818Z, Phoenix, AZ 85001-2100:

- 1. A vision examination report issued within the last 90 days from the date the report is received by the Department, as prescribed under subsection ~~(E)(2)~~ (D)(2); and
- 2. A current medical examination report and medical examiner's certificate completed pursuant to 49 CFR 391.43 within the past year.

S.Q. A driver subject to an intrastate medical waiver, or a driver subject to an intrastate medical waiver jointly with a motor carrier co-applicant, may renew an intrastate medical waiver by submitting to the Department's Medical Review Program, P.O. Box 2100, Mail Drop 818Z, Phoenix, AZ 85001-2100, a new intrastate medical waiver application. The intrastate medical waiver application shall contain the following:

- 1. Name and complete address of the motor carrier currently employing the applicant;
- 2. Name and complete address of the subject driver;

3. Total miles driven under the current intrastate medical waiver;
4. Number of accidents incurred while driving under the current intrastate medical waiver, including the date of each accident, number of fatalities, number of injuries, and the estimated dollar amount of any property damage;
5. A current medical examination report and medical examiner's certificate completed pursuant to 49 CFR 391.43;
6. A current medical examination or evaluation as applicable to the medical condition:
 - a. A current medical waiver evaluation summary, as prescribed under subsection (C)(2), for a driver with a loss of limb or limb impairment; or
 - ~~b. A current endocrinologist evaluation, as prescribed under subsection (D)(2), and a current vision evaluation report, as prescribed under subsection (D)(3), for a driver who is an insulin dependent diabetic; or~~
 - ~~e.b.~~ b. A current vision examination report, as prescribed under subsection ~~(E)(2)~~ (D)(2), for a driver with monocular vision;
7. A copy of the subject driver's current state motor vehicle driving record for the period of time the current intrastate medical waiver has been in effect;
8. Notification of any change in the type of tractor the driver will operate;
9. Subject driver's signature and date signed; and
10. Motor carrier co-applicant's signature and date signed (if applicable).

~~T.R.~~ T.R. The Director may deny an application for the intrastate medical waiver or may grant the waiver in whole or in part and issue the waiver subject to such terms, conditions, and limitations as the Director deems consistent with the public interest.

~~U.S.~~ U.S. The Director may revoke an intrastate medical waiver after providing the driver subject to an intrastate medical waiver written notice of the proposed revocation and a reasonable opportunity to request a hearing pursuant to the procedure prescribed under 17 A.A.C. 1, Article 5. The Director may revoke an intrastate medical waiver if the:

1. Driver subject to an intrastate medical waiver, or co-applicant (if applicable), or both provided false information in the application,
2. Driver subject to an intrastate medical waiver, or co-applicant (if applicable), or both failed to comply with the terms and conditions of the intrastate medical waiver, or
3. Issuance of the intrastate medical waiver resulted in a lower level of safety than before the waiver was granted.

~~V.T.~~ V.T. If the enforcement of any provision of this Section would result in the loss or disqualification of federal funding for any state agency or program, that provision is invalid.

R17-5-209. Hazardous Materials Transportation: Incorporation of Federal Regulations; Applicability

A. Incorporation of federal regulations.

1. As relevant to the transportation of hazardous materials by highway, the Department incorporates by reference, as amended under this Section, the following Parts of the Federal Hazardous Materials Regulations; revised as of October 1, ~~2016~~ 2020, and no later amendments or editions, as 49 CFR - Transportation, Subtitle B - Other Regulations Relating to Transportation, Chapter I - Pipeline and Hazardous Materials Safety Administration, Department of Transportation:
 - a. Subchapter A - Hazardous Materials and Oil Transportation; Part 107 - Hazardous materials program procedures; and
 - b. Subchapter C - Hazardous Materials Regulations; Parts:
 - i. 171 - General information, regulations, and definitions;
 - ii. 172 - Hazardous materials table, special provisions, hazardous materials communications, emergency response information, training requirements, and security plans;
 - iii. 173 - Shippers - general requirements for shipments and packagings;
 - iv. 177 - Carriage by public highway;
 - v. 178 - Specifications for packagings; and
 - vi. 180 - Continuing qualification and maintenance of packagings.
2. The material incorporated by reference under this subsection is on file with the Department at 206 S. 17th Avenue, Phoenix, AZ 85007. The incorporated material is published by National Archives and Records Administration, Office of the Federal Register, 8601 Adelphi Road, College Park, MD 20740-6001, and is printed and distributed by the U.S. Government Publishing Office, P.O. Box 979050, St. Louis, MO 63197-9000. The incorporated material can be viewed online at ~~http://www.ofr.gov or https://www.gpo.gov/fdsys~~ <https://www.govinfo.gov> and ordered online by visiting the U.S. Government ~~Online~~ Bookstore at <http://bookstore.gpo.gov>. The International Standard Book Numbers are ~~9780160935466~~ 9780160958793 for 49 CFR 107, 171, 172, 173, and 177 and ~~9780160935473~~ 9780160958809 for 49 CFR 178 and 180.

B. Application and exceptions.

1. Application.
 - a. Regulations incorporated under subsection (A) apply as amended by subsection (C) to motor carriers, shippers, and manufacturers as defined ~~under~~ in A.R.S. § 28-5201.
 - b. Regulations incorporated under subsection (A) also apply to any vehicle owned or operated by the state, a political subdivision, or a state public authority, used to transport a hazardous material, including hazardous substances and hazardous waste.
2. Exceptions. An authorized emergency vehicle, as defined ~~under~~ in A.R.S. § 28-101, is excepted from the provisions of this Section.

C. Amendments. The following sections of the Federal Hazardous Materials Regulations, incorporated under subsection (A), are amended as follows:

1. Part 171, General information, regulations, and definitions. Section 171.8, Definitions and abbreviations.

Section 171.8 is amended by revising the definitions for “~~Carrier~~ carrier,” “~~Hazmat~~ hazmat employer,” and “~~Person~~ person,” and adding a definition for “Highway highway” as follows:

“Carrier” means a person engaged in the transportation of passengers or property by highway as a common, contract, or private carrier and also includes the state, a political subdivision, and a state public authority engaged in the transportation of hazardous material.²²

“Hazmat employer” means a person who uses one or more employees in connection with: transporting hazardous material; causing hazardous material to be transported or shipped; or representing, marking, certifying, selling, offering, reconditioning, testing, repairing, or modifying containers, drums, or packagings as qualified for use in the transportation of hazardous material. This term includes motor carriers, shippers, and manufacturers defined ~~under~~ in A.R.S. § 28-5201 and includes the state, political subdivisions, and state public authorities.²²

“Highway” means a public highway as defined ~~under~~ in A.R.S. § 28-5201.²²

“Person” has the same meaning as defined ~~under~~ in A.R.S. § 28-5201.²²

2. Part 172, Hazardous materials table, special provisions, hazardous materials communications, emergency response information, training requirements, and security plans. Section 172.3, Applicability. Paragraph (a)(2) is amended to read: “Each motor carrier that transports hazardous materials, and each state agency, political subdivision, and state public authority that transports hazardous material by highway.”
3. Part 177, Carriage by public highway.
 - a. Section 177.800, Purpose and scope of this part and responsibility for compliance and training. In paragraph (a), the phrase “by private, common, or contract carriers by motor vehicle” is amended to read, “by a motor carrier operating in Arizona, a state agency, a political subdivision, or a state public authority that transports hazardous material by highway.”
 - b. Section 177.802, Inspection. Section 177.802 is amended to read: “Records, equipment, packagings, and containers under the control of a motor carrier or other persons subject to this part, affecting safety in transportation of hazardous material by motor vehicle, must be made available for examination and inspection by an authorized representative of the Department as prescribed under A.R.S. §§ 28-5204 and 28-5231.”

R17-5-210. Motor Carrier Safety: Public Service Corporation, Political Subdivision of this State that is Engaged in Rendering Public Utility Service, or Railroad Contacting State Officials in an Emergency

- A. A public service corporation, a political subdivision of this state that is engaged in rendering public utility service, or a railroad shall notify Commercial Vehicle Enforcement in writing, through the Arizona Department of Public Safety Duty Office, that an emergency situation under A.R.S. § 28-5234(B) exists. Notification shall be ~~made on a form provided by the Arizona Department of Public Safety and sent by fax transmission to (602) 223-2929~~ email to doffice@azdps.gov immediately, but in no case longer than three hours from the time the public service corporation, political subdivision of this state that is engaged in rendering public utility service,

or railroad determines that the emergency situation exists. The information to be provided in writing includes:

1. Date of the emergency situation,
 2. Time that the emergency situation started,
 3. Description of the emergency situation,
 4. Location of the emergency situation,
 5. Projected duration of the emergency situation,
 - ~~6. Authorized party's signature for determining that an emergency situation exists,~~
 - ~~7.6.~~ Name and contact number of responsible party in the field, and
 - ~~8.7.~~ The utility's self-generated Emergency ID or tracking number.
- B.** A public service corporation, a political subdivision of this state that is engaged in rendering public utility service, or a railroad shall maintain supporting documentation for no less than three years from the date of an emergency situation and shall make the supporting documentation available to a special agent upon request. Supporting documentation includes:
1. A list of drivers involved in the emergency situation;
 2. The duration of the emergency situation;
 3. The off-duty time provided for the affected drivers after the emergency situation concluded; and
 4. Any United States Department of Transportation recordable accidents, as defined ~~under~~ in 49 CFR ~~390.5~~ 390.5T, which occurred during the emergency situation.
- C.** After an emergency situation terminates and a driver returns to the principal place of business, the driver shall not drive a commercial motor vehicle unless the driver remains off duty under 49 CFR 395.

R17-5-211. Motor Carrier Safety: Inspection, Enforcement, and Sanction

- A.** Scope. This Section applies to any transporter subject to:
1. R17-5-201 through R17-5-209; and
 2. A.R.S. Title 28, Chapter 14.
- B.** Audits.
1. The Department may conduct an audit for cause or without cause.
 2. The Department may enter the premises of any transporter for the purpose of conducting an audit.
 3. The Department may inspect a motor vehicle:
 - a. Within Arizona at:
 - i. A transporter's place of business, or
 - ii. Any other in-state location, or
 - b. Outside Arizona at a transporter's place of business.
 4. A transporter shall make records available for audit:
 - a. During the transporter's normal business hours, and
 - b. In a specific location as follows:
 - i. The transporter's Arizona place of business, or

- ii. Either an Arizona location designated by the Director or the transporter's out-of-state place of business.
- 5. The Department shall charge a transporter in advance for all expenses to be incurred in performance of an out-of-state audit.
- C. Violation notification. Within five days after audit completion, the Department shall notify an audited transporter in writing of all violations. The notification shall specify a deadline date for remedy of all violations.
- D. Obligation to remedy violations. After receipt of a violation notification, a transporter shall remedy all violations by the specified date to comply with:
 - 1. R17-5-201 through R17-5-209; and
 - 2. A.R.S. Title 28, Chapter 14.
- E. Noncompliance: Failure to remedy violations. If the Department determines a transporter does not remedy a violation by the date specified in a violation notice, the Department shall initiate further enforcement action as prescribed under A.R.S. §§ 28-5237 and 28-5238.
- F. Danger to public safety. If the Director determines a written violation report establishes probable cause of danger to public safety, the Director shall issue an order by 5:00 p.m. the next business day suspending the Arizona registration of the motor vehicle owned or leased by the transporter, or a driver's Arizona driver license or nonresident driving privilege.

R17-5-212. Motor Carrier Safety: Hearing Procedure

A. Scope.

- 1. This Section applies only to a motor carrier enforcement action under:
 - a. R17-5-201 through R17-5-209; and
 - b. A.R.S. Title 28, Chapter 14.
- 2. In an enforcement hearing involving a manufacturer, motor carrier, shipper, or driver under this Section, the Department shall follow the procedures prescribed under 17 A.A.C. 1, Article 5, except as modified under subsections (B) and (C).

B. Initiation of proceedings; service.

- 1. The Director shall initiate a hearing under this Section by:
 - a. Signing and serving a complaint in the form prescribed under subsection (C) that cites a manufacturer, motor carrier, shipper, or driver for an alleged ~~infraction~~ violation; and
 - b. Submitting to the Department's Executive Hearing Office a copy of the complaint and notification of the date the complaint was served.
- 2. The date of service is the date of mailing.

C. Complaint; order to show cause.

- 1. The complaint shall contain the following:
 - a. The Department as the designated petitioner;
 - b. The respondent's name and the basis of fact for the complaint, including a listing of any alleged

- violation of ~~Department~~ statute or rule;
- c. The relief sought by the Department; and
 - d. A copy of the written violation notice issued by a law enforcement agency to the respondent, if applicable.
2. Upon receipt of a copy of ~~the~~ a complaint in compliance with subsections (B) and (C)(1), the Executive Hearing Office shall issue an order to show cause for a respondent to appear at an administrative hearing to explain why the requested relief should not be granted.
 3. The Executive Hearing Office shall hold a hearing under this Section within the time-frame required by statute.
 4. The parties may resolve a complaint before the hearing date.
 - a. The parties shall file notice of settlement with the Executive Hearing Office.
 - b. Complaint settlement terminates the right of both petitioner and respondent to receive additional administrative review.

ECONOMIC, SMALL BUSINESS AND CONSUMER IMPACT STATEMENT

TITLE 17. TRANSPORTATION

CHAPTER 5. DEPARTMENT OF TRANSPORTATION

COMMERCIAL PROGRAMS

R17-5-201 - R17-5-203, R17-5-205, R17-5-206, and R17-5-208 - R17-5-212

A. Economic, small business and consumer impact summary:

1. Identification of the proposed rulemaking:

The Arizona Department of Transportation (ADOT), in partnership with the Arizona Department of Public Safety (DPS), engages in this rulemaking to incorporate parts of the 2020 edition of the *Code of Federal Regulations*. The United States Department of Transportation (USDOT) requires that states adopt federal motor carrier safety and hazardous materials regulations to ensure eligibility for federal enforcement grants. Both ADOT and DPS rely on these federal monies to fund numerous enforcement positions.

R17-5-202(C) is being removed since Laws 2018, Chapter 307, amended the definition of a commercial motor vehicle to not include intrastate vehicles with 26,001 pounds or less, so the tow trucks mentioned in subsection (C) are no longer classified as a commercial motor vehicle and do not need the exemption or need to meet the physical qualifications and examination requirements as detailed.

Due to discussions between DPS and Department law enforcement and public safety officials, a determination has been made to remove the exemption from the federal safety registration and USDOT number requirement in R17-5-203(C) and R17-5-206(B)(1), which allows for better consistency and clarity between the requirements of interstate and intrastate farm vehicles and assist in facilitating tracking and identification of commercial motor vehicles with a poor safety rating.

49 CFR 391 was updated to indicate that drivers with diabetes mellitus treated with insulin for control are physically qualified to operate a commercial motor vehicle and as such a medical waiver is not necessary. In R17-5-208, the Department is removing the provision for an individual with an insulin-dependent diabetic condition as an allowed condition for the Intrastate Medical Waiver.

R17-5-206(B)(2) is being amended for clarification and in keeping with recent legislative changes by changing the reference from A.R.S. § 28-5245 to A.R.S. § 28-5240 in order to better ensure an understanding of the applicable state statute that may apply for noncompliance with the required safety registration and active USDOT number.

The emergency situation notification process prescribed under R17-5-210 is being updated, which includes changing from a faxed form into an email process.

In addition, clarifying and technical changes have been made to ensure consistent language and current citations are used. Changes are also made to ensure conformity to the rulemaking format and style requirements of the Arizona Administrative Procedure Act and the Office of the Secretary of State.

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

To preserve the public peace, health, and safety, ADOT and DPS officers inspect commercial trucks and buses under these rules. In addition, commercial driver license (CDL) applicants and holders are governed under state statute and these rules. It is necessary to update the rules on a regular basis to include the most recent guidelines generally accepted by the motor carrier industry and law enforcement agencies. This ensures that all motor carriers are held to the same regulatory standards and ADOT and DPS officers are able to more expediently place commercial motor vehicles out of service when finding noncompliance issues severe enough to warrant concern for public safety.

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:

DPS administers and enforces the federal Motor Carrier Safety Assistance Program (MCSAP) throughout the state under these rules. To remain in compliance with federal mandates, the Federal Motor Carrier Safety Administration (FMCSA) requires that each state adopt federal motor carrier safety and hazardous materials regulations that are current to within three years.

FMCSA extends annually to DPS a substantial grant under MCSAP for state law enforcement of motor carrier safety and hazardous materials programs. DPS administers the federal grants received for enforcing the federal motor carrier safety and hazardous materials regulations. MCSAP funds are distributed chiefly to DPS but may also be sub-allocated to other state, county, and municipal enforcement agencies upon application to underwrite local enforcement costs. These grants total approximately \$10 -12 million annually and cover the costs of salaries, equipment, and other expenses for motor carrier and hazardous materials related enforcement.

A requirement of the grants is to adopt federal regulations into state law. Failure to do so jeopardizes possible future grant funding opportunities. The possibility exists of either the withholding of, or reduction in, federal funding for the state if these rules are not codified as quickly as possible. A loss or reduction of federal funding would also have a safety impact on Arizona motorists if large trucks and buses are not able to be inspected as often as they are now. Notwithstanding the withholding of funds as described above, FMCSA could prohibit ADOT's CDL Program from issuing, renewing, transferring, or upgrading CDLs in this state if they determine that Arizona is not substantially in compliance with 49 U.S.C. 31311(a).

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

DPS inspected over 42,960 commercial motor vehicles in 2020. Of these inspections, 6,299 of the drivers and 7,942 of the vehicles were placed out of service after the inspection, meaning that the

violations were so severe that the driver was prohibited from driving and the vehicle was prohibited from being moved until the violations were corrected. With continued efforts to enforce the federal motor carrier safety and hazardous material regulations incorporated by these rules, ADOT and DPS anticipate the out-of-service rates for both drivers and vehicles will make highway travel safer.

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

DPS administers federal grants received for enforcing the federal motor carrier safety and hazardous materials regulations. These grants total approximately \$10 - 12 million annually and cover the costs of salaries, equipment, and other expenses for motor carrier and hazardous materials related enforcement.

The primary cost bearers in relation to these rules are DPS, ADOT, counties, municipal law enforcement agencies electing to enforce the provisions locally, privately contracted consultant trainers of law enforcement personnel, motor carriers, and CDL applicants and holders.

DPS incurs substantial costs (more than \$10,000) annually for program administration as well as a not readily quantifiable portion of officer salaries for hazardous materials transportation program enforcement. Business entities bear moderate costs in possible federal registration fees, inspection fees, insurance, equipment, and maintenance to remain in compliance with the rules. However, these costs arise from the federal law rather than from this rulemaking. Minimal administrative costs are borne by independent consultant trainers who educate law enforcement and business entities on rule compliance.

ADOT is statutorily required to administer the driver licensing and medical evaluation activities required of commercial motor vehicle drivers under A.R.S. Title 28 and these rules. As of January 20, 2021, there are 113,982 valid Arizona CDLs, of those there are 1,548 with a hazardous materials endorsement, 39,072 with a tanker endorsement, 14,525 with a combination hazardous materials/tanker endorsement, 26,264 with a passenger endorsement, 12,959 with a school bus endorsement, and 36,864 with a double/triple trailer endorsement. There are also 2,341 Arizona commercial learner's permits, of those there are 1 with a hazardous materials endorsement, 389 with a tanker endorsement, 1 with a combination hazardous materials/tanker endorsement, 369 with a passenger endorsement, 162 with a school bus endorsement, and 1 with a double/triple trailer endorsement. ADOT does not expect this rulemaking to create a significant increase or decrease in costs or benefits to the agency since the rulemaking is generally intended to incorporate by reference an updated version of the federal motor carrier safety and hazardous materials regulations that the agency currently has in place.

FMCSA extends annually to DPS a substantial grant under MCSAP for state law enforcement of motor carrier safety and hazardous materials programs. MCSAP funds are distributed chiefly to DPS but may also be sub-allocated to county and municipal enforcement agencies upon application to underwrite local enforcement costs.

Local enforcement cost estimates are difficult to quantify as they are contingent upon whether officers are dedicated to motor carrier and hazardous materials provision enforcement or incorporate motor carrier/hazardous materials enforcement together with other duties. Accordingly, local law enforcement electing to engage in motor carrier and hazardous materials provision enforcement could stand to benefit substantially from cost defrayal through receipt of MCSAP fund allocation by application to DPS, the primary recipient of the MCSAP federal grant monies.

To maintain compliance with the provisions of these rules, motor carriers will likely incur minimal to moderate costs in the form of federal registration fees, equipment, maintenance, insurance, and inspection fees. However, those costs arise from the federal law rather than from this rulemaking. There are no new fees associated with this rulemaking. Under this rulemaking, operators of applicable farm vehicles will need to comply with USDOT safety registration, which does not have a fee, but may have minimal costs for the required markings. If a motor carrier is found to be noncompliant with provisions of these rules, costs of sanctions under A.R.S. § 28-5238 could range from \$1,000 to \$25,000 per citation and the possible loss of a CDL as prescribed under A.R.S. § 28-5238. Benefits to motor carriers remaining in compliance with these rules include increased safety, lower financial responsibility premiums, reduction in paperwork, the opportunity to increase profit margin through better customer service, and more expedient administrative processing by law enforcement.

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

Name: Candace Olson
 Address: Rules and Policy Development
 Department of Transportation
 206 S. 17th Ave., Mail Drop 180A
 Phoenix, AZ 85007
 Telephone: (480) 267-6610
 E-mail: COlson2@azdot.gov

B. 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:

Persons to bear costs	Persons directly benefiting
ADOT	ADOT
DPS	DPS

Persons to bear costs	Persons directly benefiting
Counties and municipal law enforcement agencies electing to locally enforce federal motor carrier safety and hazardous materials regulations	Counties and municipal law enforcement agencies electing to locally enforce federal motor carrier safety and hazardous materials regulations
Independent consultant trainers of law enforcement personnel	Independent consultant trainers of law enforcement personnel
Arizona motor carriers	Arizona motor carriers
Arizona CDL applicants and holders	Arizona CDL applicants and holders
	Arizona motorists
	General public

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

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

- Minimal less than \$10,000
- Moderate \$10,000 to \$99,999
- Substantial \$100,000 or more

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

ADOT does not expect this rulemaking to create a significant increase or decrease in costs or benefits to the agency since the rulemaking is generally intended to incorporate by reference an updated version of the federal motor carrier safety and hazardous materials regulations the agency currently has in place. The anticipated economic impact to ADOT is moderate and includes the resources necessary for rulemaking and the costs associated with implementation of the rules. ADOT should benefit by having to spend less resources on providing individual clarification of the rules to regulated persons attempting to make an informed decision on whether to apply for an interstate or intrastate CDL. ADOT may have a slight decrease in costs due to no longer needing to issue and maintain an Intrastate Medical Waiver for an individual with an insulin-dependent diabetic condition.

ADOT is not required to notify the Joint Legislative Budget Committee under A.R.S. § 41-1055(B)(3)(a), since no new full time employees are necessary to enforce and implement these rules.

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

Local enforcement cost estimates are difficult to quantify as they are contingent upon whether officers are dedicated to commercial vehicle enforcement or incorporate commercial vehicle enforcement together with other duties. Accordingly, local law enforcement electing to engage in commercial

vehicle enforcement could stand to benefit substantially from cost defrayal through receipt of MCSAP fund allocation by application to DPS, the primary recipient of the MCSAP federal grant monies.

Political subdivisions will benefit from an increase in the number of eligible commercial motor vehicle operators and from being able to retain experienced CDL holders who become eligible for an Intrastate Medical Waiver.

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:

To maintain compliance with the provisions of these rules, motor carriers will likely incur minimal to moderate costs in the form of federal registration fees, equipment, maintenance, insurance, and inspection fees. Overall, these costs arise from the federal law rather than from this rulemaking. There are no new fees associated with this rulemaking.

Operators of applicable farm vehicles will need to comply with USDOT safety registration, which does not have a fee, but may have minimal costs for the required markings.

If a motor carrier is found to be noncompliant with provisions of these rules, costs of sanctions under A.R.S. § 28-5238 could range from \$1,000 to \$25,000 per finding and the possible loss of a CDL as prescribed under A.R.S. § 28-5238. Benefits to motor carriers remaining in compliance with these rules include increased safety, lower financial responsibility premiums, reduction in paperwork, the opportunity to increase profit margin through better customer service, and more expedient administrative processing by law enforcement.

Businesses may see a decrease in financial burdens due to the new hours of service regulations, as they will expand the short haul exemption, expand the adverse driving condition exemption, and make the 30-minute break and 14-hour regulations more beneficial to drivers.

Businesses may also see a decrease in costs for their drivers who are insulin-dependent diabetics and who no longer need to obtain a medical waiver, though this also may lead to less business for the doctors who performed the applicable medical evaluations.

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:

ADOT anticipates a minimal impact on private and public employment as a result of this rulemaking. Employers may benefit from being able to retain experienced CDL holders and being able to hire from a larger pool of applicants, especially from potential individuals with an insulin-dependent diabetic condition who felt the medical waiver process cumbersome and chose not to have a CDL at that time and are now eligible without the need for a medical waiver.

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

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

The small businesses subject to these rules, as defined under A.R.S. § 41-1001(20), are independent motor carriers, commercially-licensed drivers already subject to the federal motor carrier safety and hazardous materials regulations, and the doctors required to perform the necessary medical evaluations.

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

Uniform safety and compliance costs for small businesses are the same as discussed under paragraph (B)(3)(c) above. For the most part, ADOT anticipates no new significant economic impact to qualified persons and business entities as a result of this rulemaking. There is not a fee for the required USDOT safety registration. There may be minimal costs for the required USDOT safety registration markings.

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

The rules provide a more expedient application process for individuals seeking a medical variance from certain physical qualifications and procedures typically required of interstate commercial motor vehicle operators under 49 CFR 391.41(b)(1), (b)(2), or (b)(10), if the individual is otherwise qualified to operate a commercial motor vehicle in intrastate commerce.

Since the uniform procedures and sanctions under these rules are required by federal and state mandates, ADOT is unable to further reduce any impact on small businesses. See paragraph (B)(7) below.

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

The rules support the public interest and the interests of concerned parties by ensuring that all federal motor carrier safety and hazardous materials regulations and requirements of motor carriers are uniformly applied and enforced. The public benefits when all motor carriers remain in compliance with these rules as they ensure increased safety, lower financial responsibility premiums, provide opportunity for increasing profit margins through better customer service, and facilitate more expedient administrative processing by law enforcement. Motor carrier drivers may see a benefit due to the new hours of service regulations, as they will expand the short haul exemption, expand the adverse driving condition exemption, and make the 30-minute break and 14-hour regulations more beneficial to drivers. Insulin-dependent diabetic CDL drivers will benefit by no longer needing to obtain and maintain a medical waiver and pay for any additional costs for the additional medical evaluations. The doctors who performed the additional medical evaluations may have a decrease in profit.

6. Statement of the probable effect on state revenues:

DPS will be eligible to apply for an estimated \$10 – 12 million in MCSAP funding that may be used for commercial motor vehicle safety programs such as:

- Motor carrier safety programs in accordance with 49 CFR 350.203;

- Size and weight enforcement programs in accordance with 49 CFR 350.227(b)(1);
- Criminal activity enforcement programs in accordance with 49 CFR 350.227(b)(2);and
- Traffic safety programs in accordance with 49 CFR 350.227(c).

This rulemaking ensures that an amount of up to 5 percent of the state's federal-aid highway funds apportioned under each of sections 104(b)(1), (b)(3), and (b)(4) of 23 U.S.C. will not be withheld for noncompliance. Based on amounts traditionally received by ADOT, this amount could reach approximately \$30 million depending on the actual appropriation.

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

In rulemaking, ADOT routinely adopts the least costly and least burdensome options for any process or procedure required of the regulated public or industry. However, each state is required under 49 CFR 384.301 to adopt and carry out a program for testing and ensuring the fitness of individuals to operate commercial motor vehicles consistent with the minimum standards prescribed by the Secretary of Transportation under 49 U.S.C. 31305(a) as soon as practical, or an amount of up to 5 percent of the state's federal-aid highway funds apportioned under each of sections 104(b)(1), (b)(3), and (b)(4) of 23 U.S.C. may be withheld from the state for noncompliance. Based on amounts traditionally received by the Department, this amount could reach approximately \$30 million depending on the actual appropriation. Therefore, to the extent permitted by federal law, ADOT has determined that these rules impose the least burden and costs to regulated persons.

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

None

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ARTICLE 1. GENERAL PROVISIONS**ARTICLE 2. MOTOR CARRIERS****R17-5-201. Definitions**

In addition to the definitions provided under A.R.S. §§ 28-3001 and 28-5201, the following definitions apply to this Article unless otherwise specified:

“Audit” means any inspection of a transporter’s motor vehicle, equipment, books, or records to determine compliance with this Article and A.R.S. Title 28, Chapter 14.

“Co-applicant” means an employer or potential employer.

“Danger to public safety” means any condition of a transporter likely to result in serious peril to the public if not discontinued immediately.

“Director” means the Director of the Arizona Department of Transportation or the Director’s designated agent.

“Executive Hearing Office” means the Arizona Department of Transportation’s Executive Hearing Office.

“Medical waiver evaluation summary” means the form, provided by the Department, to be completed by either a board qualified or board certified orthopedic surgeon or physiatrist and mailed to the Department, at the address provided on the form, on behalf of an Arizona intrastate medical waiver applicant.

“Physiatrist” means a doctor of medicine specialized in physical medicine and rehabilitation.

“Transporter” means any person, driver, motor carrier, shipper, manufacturer, or motor vehicle, including any motor vehicle transporting a hazardous material, hazardous substance, or hazardous waste, subject to this Article and A.R.S. Title 28, Chapter 14.

“Violation” means any conduct, act, or failure to act required or prohibited under this Article and A.R.S. Title 28, Chapter 14.

“Vision examination report” means a form provided by the Department to be completed by an ophthalmologist or a licensed optometrist on behalf of a driver or driver applicant and mailed to the Department, at the address provided on the form, for use in determining whether or not a medical condition affects the driver’s, or driver applicant’s, ability to safely perform the functional skills involved with driving a motor vehicle.

Historical Note

New Section made by final rulemaking at 8 A.A.R. 3249, effective July 10, 2002 (Supp. 02-3). Amended by final rulemaking at 14 A.A.R. 3797, effective November 8, 2008 (Supp. 08-3). Amended by final rulemaking at 17 A.A.R. 1691, effective August 2, 2011 (Supp. 11-3).

R17-5-202. Motor Carrier Safety: Incorporation of Federal Regulations; Applicability

- A. The Department incorporates by reference 49 CFR 40, 379, 382, 383, 385 (except 385.301, 385.303, 385.305, 385.329, 385.405, 385.409, 385.419, 385.421, 385.603, 385.607, 385.609, and 385.713), 390 (except 390.3, 390.5, 390.19, 390.21, 390.40, and subpart E), 391, 392, 393, 395, 396, 397, and 399, revised as of October 1, 2016, and no later amendments or editions, as amended under this Article. The Department incorporates by reference 49 CFR 385.301T, 385.303T, 385.305T, 385.329T, 385.405T, 385.409T, 385.419T, 385.421T, 385.603T, 385.607T, 385.609T, 385.713T, 390.3T, 390.5T, 390.19T, 390.21T, 390.40T, and 390.200T, as pub-

lished in 82 FR 5292, January 17, 2017, and no later amendments or editions, as amended under this Article. The incorporated material is on file with the Department at 206 S. 17th Avenue, Phoenix, AZ 85007. The incorporated material is published by National Archives and Records Administration, Office of the Federal Register, 8601 Adelphi Road, College Park, MD 20740-6001, and is printed and distributed by the U.S. Government Publishing Office, P.O. Box 979050, St. Louis, MO 63197-9000. The incorporated material can be viewed online at <http://www.ofr.gov> or <https://www.gpo.gov/fdsys> and ordered online by visiting the U.S. Government Online Bookstore at <http://bookstore.gpo.gov>. The International Standard Book Numbers are 9780160935459 for 49 CFR 40 and 9780160935497 for 49 CFR 379, 382, 383, 385, 390, 391, 392, 393, 395, 396, 397, and 399.

- B. The sections of 49 CFR incorporated under subsection (A) apply as amended under this Article to all intrastate and interstate motor carriers operating in Arizona and persons operating a commercial motor vehicle, except as provided under subsection (C).
- C. The intrastate operator of a tow truck with a gross vehicle weight rating of 26,000 pounds or less is exempt from the requirements of 49 CFR 390 through 399, except that the driver is subject to the physical qualifications and examination requirements of 49 CFR 391, subpart E.

Historical Note

New Section recodified from R17-4-435 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 8 A.A.R. 3249, effective July 10, 2002 (Supp. 02-3). Amended by final rulemaking at 9 A.A.R. 1867, effective June 3, 2003 (Supp. 03-2). Amended by final rulemaking at 10 A.A.R. 2679, effective June 8, 2004 (Supp. 04-2). Amended by final rulemaking at 12 A.A.R. 1559, effective May 2, 2006 (Supp. 06-2). Amended by final rulemaking at 14 A.A.R. 3797, effective November 8, 2008 (Supp. 08-3). Amended by final rulemaking at 17 A.A.R. 1691, effective August 2, 2011 (Supp. 11-3). Amended by final rulemaking at 20 A.A.R. 2382, effective August 5, 2014 (Supp. 14-3). Amended by final rulemaking at 24 A.A.R. 1549, effective May 1, 2018 (Supp. 18-2).

R17-5-203. Motor Carrier Safety: 49 CFR 390 - Federal Motor Carrier Safety Regulations; General

- A. 49 CFR 390.3T, General applicability. Paragraph (a) is amended to read:

Regulations incorporated in this subchapter are applicable to all motor carriers operating in Arizona and any vehicle owned or operated by the state, a political subdivision, or a state public authority that is used to transport a hazardous material in an amount requiring the vehicle to be placarded as prescribed under R17-5-209.

- B. 49 CFR 390.5T, Definitions. The definitions listed under 49 CFR 390.5T are amended as follows:

“Commercial Motor Vehicle” or “CMV” has the same meaning as prescribed under A.R.S. § 28-5201.

“Shipper” has the same meaning as prescribed under A.R.S. § 28-5201.

“Special agent” means an officer or agent of the Department, the Department of Public Safety, or a political subdivision, who is trained and certified by the Department of Public Safety to enforce Arizona’s Motor Carrier Safety requirements.

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“State” means a state of the United States or the District of Columbia.

“Tow truck,” as used in the definition of emergency under 49 CFR 390.5, has the same meaning as prescribed under A.A.C. R13-3-701.

- C. 49 CFR 390.19T, Motor carrier identification reports for certain Mexico-domiciled motor carriers. Paragraph (a)(1) is amended to read:

A U.S.-, Canada-, Mexico-, or non-North America-domiciled motor carrier conducting operations in interstate commerce or in intrastate commerce in a CMV, except for intrastate commerce in a farm vehicle as defined under A.R.S. § 28-2514, must file a Motor Carrier Identification Report, Form MCS-150.

- D. 49 CFR 390.23, Relief from regulations.

1. Paragraph (a)(2), Local emergencies, is amended by adding:

When a local emergency exists that justifies an exemption from parts 390 through 399 of this chapter, a motor carrier may request the exemption by contacting Commercial Vehicle Enforcement at the Arizona Department of Public Safety, Highway Patrol Division, P.O. Box 6638, Phoenix, AZ 85005. The Arizona Department of Public Safety may grant the exemption with or without restrictions as necessary to provide vital service to the public.

2. Paragraph (a)(2)(i)(A) is amended to read:

An emergency has been declared by a federal, state or local government official having authority to declare an emergency; or an emergency situation exists under A.R.S. § 28-5234(B); or

- E. 49 CFR 390.25, Extension of relief from regulations - emergencies, is amended by adding:

A motor carrier seeking to extend a period of relief from these regulations may request the extension by contacting Commercial Vehicle Enforcement at the Arizona Department of Public Safety, Highway Patrol Division, P.O. Box 6638, Phoenix, AZ 85005. The Arizona Department of Public Safety may grant the extension with any restrictions it considers necessary to provide vital service to the public.

Historical Note

New Section recodified from R17-4-435.01 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 8 A.A.R. 3249, effective July 10, 2002 (Supp. 02-3). Amended by final rulemaking at 9 A.A.R. 1867, effective June 3, 2003 (Supp. 03-2). Amended by final rulemaking at 11 A.A.R. 862, effective February 1, 2005 (Supp. 05-1). Amended by final rulemaking at 12 A.A.R. 1559, effective May 2, 2006 (Supp. 06-2). Amended by final rulemaking at 13 A.A.R. 2636, effective July 10, 2007 (Supp. 07-3). Amended by final rulemaking at 14 A.A.R. 3797, effective November 8, 2008 (Supp. 08-3). Amended by final rulemaking at 17 A.A.R. 1691, effective August 2, 2011 (Supp. 11-3). Amended by final rulemaking at 20 A.A.R. 2382, effective August 5, 2014 (Supp. 14-3). Amended by final rulemaking at 24 A.A.R. 1549, effective May 1, 2018 (Supp. 18-2).

R17-5-204. Motor Carrier Safety: 49 CFR 391 - Qualifications of Drivers and Longer Combination Vehicle (LCV) Driver Instructors

- A. 49 CFR 391.11, General qualifications of drivers. Paragraph (b)(1) is amended to read: Is at least 21 years of age for interstate operation or is at least 18 years of age for operations

restricted to intrastate transportation not involving the transportation of a reportable quantity of hazardous substance, hazardous waste required to be manifested, or hazardous material in an amount requiring a vehicle to be placarded as prescribed under R17-5-209;

- B. 49 CFR 391.51, General requirements for driver qualification files. Paragraph (b)(8) is amended to read: A Skill Performance Evaluation Certificate obtained from a Field Administrator, Division Administrator, or state Director issued in accordance with § 391.49; or the Medical Exemption document, issued by a Federal medical program in accordance with part 381 of this chapter; or a copy of the Arizona intrastate medical waiver, if a waiver is granted by the Director as prescribed under R17-5-208.

Historical Note

New Section recodified from R17-4-435.02 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 14 A.A.R. 3797, effective November 8, 2008 (Supp. 08-3). Amended by final rulemaking at 17 A.A.R. 1691, effective August 2, 2011 (Supp. 11-3). Amended by final rulemaking at 20 A.A.R. 2382, effective August 5, 2014 (Supp. 14-3).

R17-5-205. Motor Carrier Safety: 49 CFR 383 - Commercial Driver's License Standards; Requirements and Penalties

- A. 49 CFR 383.5, Definitions. The definitions listed under 49 CFR 383.5 are amended as follows:

“Commercial motor vehicle” or “CMV” has the same meaning as prescribed under A.R.S. § 28-3001.

“Conviction” has the same meaning as prescribed under A.R.S. § 28-3001.

“Disqualification” has the same meaning as prescribed under A.R.S. § 28-3001.

“Motor vehicle” has the same meaning as prescribed under A.R.S. § 28-101.

“Out-of-service order” has the same meaning as prescribed under A.R.S. § 28-5241.

“School bus” has the same meaning as prescribed under A.R.S. § 28-101.

“Tank vehicle” has the same meaning as prescribed under A.R.S. § 28-3103.

- B. 49 CFR 383.71, Driver application and certification procedures. Paragraphs (b)(1)(ii), Excepted interstate, and (b)(1)(iv), Excepted intrastate, are deleted.

- C. 49 CFR 383.73, State procedures.

1. Paragraph (c)(4) is amended to read:

If such applicant wishes to retain a hazardous materials endorsement, require compliance with standards for such endorsement specified in §§ 383.71(b)(8) and 383.141 and ensure that the driver has successfully completed a new test for such endorsement specified in § 383.121.

2. Paragraphs (c)(4)(i) and (c)(4)(ii) are deleted.

3. Paragraph (f)(2)(ii) is amended to read:

The state must add the word “non-domiciled” to the face of the CLP or CDL, in accordance with § 383.153(c) or “limited-term” to the face of the CLP or CDL, in accordance with 6 CFR 37.21; and

- D. 49 CFR 383.75, Third party testing. Paragraph (a)(8)(v) is amended to read:

Require the third party tester to initiate and maintain a bond in an amount pursuant to A.R.S. Title 28, Chapter

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13 to be sufficient to pay for re-testing drivers in the event that the third party or one or more of its examiners is involved in fraudulent activities related to conducting skills testing of applicants for a CDL. Exception: A third party tester that is a government entity is not required to maintain a bond. A provider exempted under A.R.S. Title 28, Chapter 13, is responsible for all costs associated with all re-testing of applicants due to examination fraud as determined by the Department.

- E. 49 CFR 383.153, Information on the CLP and CDL documents and applications. The introductory sentence in paragraph (e) is amended to read:

Before a CLP or CDL may be issued:

Historical Note

New Section recodified from R17-4-435.03 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 8 A.A.R. 3249, effective July 10, 2002 (Supp. 02-3). Amended by final rulemaking at 14 A.A.R. 3797, effective November 8, 2008 (Supp. 08-3). Section repealed by final rulemaking at 17 A.A.R. 1691, effective August 2, 2011 (Supp. 11-3). New Section made by final rulemaking at 20 A.A.R. 2382, effective August 5, 2016 (Supp. 14-3). Amended by final rulemaking at 24 A.A.R. 1549, effective May 1, 2018 (Supp. 18-2).

R17-5-206. Motor Carrier Safety: 49 CFR 392 - Driving of Commercial Motor Vehicles

- A. 49 CFR 392.5, Alcohol prohibition. Paragraph (e) is amended by adding:

Drivers who violate the terms of an out-of-service order as prescribed under this section are also subject to the provisions and sanctions of A.R.S. § 28-5241.

- B. 49 CFR 392.9b, Prohibited transportation.

1. Paragraph (a) is amended to read:
Safety registration required. A commercial motor vehicle providing transportation in interstate commerce or in intrastate commerce, except for intrastate commerce in a farm vehicle as defined under A.R.S. § 28-2514, must not be operated without a safety registration and an active USDOT Number.
2. Paragraph (b), Penalties, is amended to read:
Penalties. If it is determined that the motor carrier responsible for the operation of such a vehicle is operating in violation of paragraph (a) of this section, it may be subject to penalties in accordance with 49 U.S.C. 521 for interstate commerce and A.R.S. § 28-5245 for intrastate commerce.

Historical Note

New Section recodified from R17-4-435.04 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 9 A.A.R. 1867, effective June 3, 2003 (Supp. 03-2). Amended by final rulemaking at 14 A.A.R. 3797, effective November 8, 2008 (Supp. 08-3). Amended by final rulemaking at 17 A.A.R. 1691, effective August 2, 2011 (Supp. 11-3). Amended by final rulemaking at 24 A.A.R. 1549, effective May 1, 2018 (Supp. 18-2).

R17-5-207. Civil Penalties

To determine the amount of civil penalty for repeat findings of responsibility for the same class of violations involving vehicles required to be placarded, the higher level of civil penalty as prescribed under A.R.S. § 28-5238 applies.

Historical Note

New Section recodified from R17-4-435.05 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Amended by

final rulemaking at 14 A.A.R. 3797, effective November 8, 2008 (Supp. 08-3).

R17-5-208. Commercial Driver License Intrastate Medical Waiver; Intrastate Alternative Physical Qualification Standards for the Loss or Impairment of Limbs, an Insulin-Dependent Diabetic Condition, or Monocular Vision

- A. A person who is not physically qualified to drive a commercial motor vehicle in interstate commerce due to loss of limb, limb impairment, an insulin-dependent diabetic condition, or monocular vision, as provided under 49 CFR 391.41(b)(1), (b)(2), (b)(3), or (b)(10), but otherwise meets all other requirements under 49 CFR 391.41, may operate a commercial motor vehicle in intrastate commerce if granted an intrastate medical waiver by the Director. Application for an intrastate medical waiver shall be submitted according to subsection (B).

- B. A driver applicant, or a driver applicant jointly with the motor carrier co-applicant that will employ the driver applicant, shall complete and submit the applicable intrastate medical waiver application to the Department's Medical Review Program, P.O. Box 2100, Mail Drop 818Z, Phoenix, AZ 85001-2100, with the following information as applicable:

1. Identify the applicant:
 - a. Name and complete address of the driver applicant;
 - b. Name and complete address of the motor carrier co-applicant;
 - c. U.S. Department of Transportation motor carrier identification number, if known; and
 - d. A description of the driver applicant's limb or visual impairment or insulin-dependent diabetic condition as applicable to the type of waiver being requested;
2. Describe the type of operation the driver applicant will be employed to perform, including the following information (if known):
 - a. Average period of time the driver will be driving or on duty, per day;
 - b. Type of commodities or cargo to be transported;
 - c. Type of driver operation (i.e., sleeper team, relay, owner operator, etc.); and
 - d. Number of years experience operating each type of commercial motor vehicle requested in the intrastate medical waiver application and total years of experience operating all types of commercial motor vehicles;
3. Describe the commercial motor vehicles the driver applicant intends to drive:
 - a. Truck, truck tractor, or bus make, model, and year (if known);
 - b. Drive train:
 - i. Transmission type (automatic or manual - if manual, designate number of forward speeds);
 - ii. Auxiliary transmission (if any) and number of forward speeds; and
 - iii. Rear axle (designate single speed, two-speed, or three-speed);
 - c. Type of brake system;
 - d. Steering, manual or power assisted;
 - e. Description of types of trailers (i.e., van, flatbed, cargo tank, drop frame, lowboy, or pole);
 - f. Number of semitrailers or full trailers to be towed at one time;
 - g. For commercial motor vehicles designed to transport passengers, indicate the seating capacity of the commercial motor vehicle; and
 - h. Description of any modifications made to the commercial motor vehicle for the driver applicant, attach photographs where applicable;

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4. Include a certification statement:
 - a. The driver applicant shall certify that the driver applicant is otherwise qualified to drive a commercial motor vehicle under the regulations of 49 CFR 391 as adopted by the Department; and
 - b. In case of a co-applicant, the co-applicant motor carrier shall certify that the driver applicant is otherwise qualified to drive a commercial motor vehicle under the regulations of 49 CFR 391 as adopted by the Department; and
5. Contain signature of each applicant and date signed:
 - a. The driver applicant's signature; and
 - b. The motor carrier official's signature and title if the application has a co-applicant. Depending on the motor carrier's organizational structure (corporation, partnership, or proprietorship), the signer of the application shall be an officer, partner, or the proprietor.
- C. The completed intrastate medical waiver application for a driver applicant not physically qualified to drive under 49 CFR 391.41(b)(1) or (b)(2) shall be accompanied by:
 1. A copy of the medical examination report and medical examiner's certificate completed pursuant to 49 CFR 391.43;
 2. The Department's medical waiver evaluation summary completed by either a board-qualified or board-certified physiatrist or orthopedic surgeon. The co-applicant motor carrier or the driver applicant shall provide the physiatrist or orthopedic surgeon with a description of the job-related tasks the driver applicant will be required to perform:
 - a. The medical waiver evaluation summary for a driver applicant not physically qualified to drive under 49 CFR 391.41(b)(1) shall include:
 - i. An assessment of the functional capabilities of the driver as they relate to the ability of the driver to perform normal tasks associated with operating a commercial motor vehicle; and
 - ii. A statement by a board-qualified or board-certified physiatrist or orthopedic surgeon that the applicant is capable of demonstrating precision prehension (e.g., manipulating knobs and switches) and power grasp prehension (e.g., holding and maneuvering the steering wheel) with each upper limb separately;
 - b. The medical waiver evaluation summary for a driver applicant not physically qualified to drive under 49 CFR 391.41(b)(2) shall include:
 - i. An explanation as to how and why the impairment interferes with the ability of the applicant to perform normal tasks associated with operating a commercial motor vehicle;
 - ii. An assessment and medical opinion of whether the condition will likely remain medically stable over the lifetime of the driver applicant; and
 - iii. A statement by a board-qualified or board-certified physiatrist or orthopedic surgeon that the applicant is capable of demonstrating precision prehension (e.g., manipulating knobs and switches) and power grasp prehension (e.g., holding and maneuvering the steering wheel) with each upper limb separately;
 3. A description of the driver applicant's prosthetic or orthotic device worn, if any; and
 4. A copy of the driver applicant's state motor vehicle driving record for the past three years from each state in which a motor vehicle driver license or permit has been obtained.
- D. The completed intrastate medical waiver application for a driver applicant not physically qualified to drive under 49 CFR 391.41(b)(3) shall be accompanied by:
 1. A copy of the medical examination report and medical examiner's certificate completed pursuant to 49 CFR 391.43;
 2. An evaluation by a board-certified or board-eligible endocrinologist. A complete endocrinologist evaluation shall consist of:
 - a. A comprehensive evaluation of the applicant's five-year medical history and current status. The applicant shall provide the examining endocrinologist with a complete medical history as it pertains to the applicant's diabetes or its complications or both, including, the date insulin use began, all hospitalization reports, consultation notes for diagnostic examinations, special studies, follow-up reports, reports of any hypoglycemic insulin reactions within the 12 months prior to the date of application, and other reports as requested by the endocrinologist. The evaluation shall also include a review of:
 - i. Daily glucose monitoring logs, glycosylated hemoglobin (A1c) indicating a result in the range of 7% to 10%, including lab reference page performed during the last six months unless recently diagnosed;
 - ii. Insulin dosages and types, diet utilized for control, and all medications taken; and
 - iii. Examinations to detect any peripheral neuropathy or circulatory insufficiency of the extremities;
 - b. A statement that the applicant is free from insulin reactions. Insulin reactions include any severe hypoglycemic reaction, which can be a reaction that results in seizure, loss of consciousness, requiring the assistance of another person, or a period of impaired cognitive function that occurs without warning. To be eligible the applicant must not have hypoglycemia unawareness and must have had no more than one documented severe hypoglycemic reaction in the previous 12 months and must have had:
 - i. No recurrent (two or more) severe hypoglycemic reactions resulting in a loss of consciousness or seizure within the past five years;
 - ii. No recurrent severe hypoglycemic reactions requiring the assistance of another person within the past five years;
 - iii. No recurrent severe hypoglycemic reactions resulting in impaired cognitive functions that occurred without warning symptoms within the past five years; and
 - iv. A period of one year of demonstrated stability following the first period of severe hypoglycemia;
 - c. A statement prepared and signed by the examining endocrinologist whose status as board-certified or board-eligible is indicated. The signed statement shall include separate declarations indicating the following medical determinations:
 - i. The endocrinologist is familiar with the applicant's medical history for the past five years through a records review, treating the patient, or consultation with the treating physician;

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- ii. The applicant is able to safely operate a commercial motor vehicle while using insulin; and
- iii. The applicant has been educated in diabetes, including the last education date, and its management and is informed of and understands how to individually manage and monitor the applicant's diabetes mellitus and has demonstrated the ability and willingness to properly monitor and manage the applicant's diabetes and procedures to follow if complications arise;
- 3. A separate signed vision evaluation report from an ophthalmologist or optometrist indicating that the applicant has been examined and does not have diabetic retinopathy and meets the vision standard of 49 CFR 391.41(b)(10), or has been issued a valid intrastate medical waiver for monocular vision. If the applicant has any evidence of diabetic retinopathy, the applicant must be examined by an ophthalmologist and submit a separate signed statement from the ophthalmologist that the applicant does not have unstable proliferative diabetic retinopathy (i.e. unstable advancing disease of blood vessels in the retina); and
- 4. A copy of the driver applicant's state motor vehicle driving record for the past three years from each state in which a motor vehicle driver license or permit has been obtained.
- E. The completed intrastate medical waiver application for a driver applicant not physically qualified to drive under 49 CFR 391.41(b)(10) shall be accompanied by:
 - 1. A copy of the medical examination report and medical examiner's certificate completed pursuant to 49 CFR 391.43;
 - 2. A current vision examination report issued within the last 90 days from the date the report is received by the Department, completed by an ophthalmologist or optometrist. The report shall indicate that the applicant has distant visual acuity of at least 20/40 (Snellen), with or without a corrective lens, in one eye, and the applicant's dominant eye has a visual field of at least 70° peripheral measurement in one direction and 35° in the opposite direction of the horizontal meridian and the ability to distinguish the colors of a traffic signal or device showing standard red, green, and amber, as applicable to the type of medical waiver being requested;
 - 3. A copy of the driver applicant's state motor vehicle driving record for the past three years from each state in which a motor vehicle driver license or permit has been obtained; and
 - 4. A statement from the employer that the driver applicant has driven the type of vehicle for which the waiver is being requested for at least two of the previous five years.
- F. Agreement. A motor carrier that employs a driver subject to an intrastate medical waiver granted by the Director under subsection (A), whether the waiver was granted unilaterally to the driver, or to the driver and co-applicant motor carrier, shall agree to:
 - 1. Report to the Department's Medical Review Program, P.O. Box 2100, Mail Drop 818Z, Phoenix, AZ 85001-2100, in writing, any suspension, revocation, disqualification, or withdrawal of the subject driver's driver license or permit, and any accident, arrest, or conviction involving the driver within 30 days after the occurrence;
 - 2. Provide to the Department's Medical Review Program, on request, any documents and information pertaining to the driving activities, accidents, arrests, convictions, and driver license or permit suspensions, revocations, disqualifications, or withdrawals involving the subject driver;
- 3. Evaluate the subject driver with a road test using the trailer types the motor carrier intends the driver to transport, or alternatively accept a certificate of a trailer road test from another motor carrier if the trailer types are similar, or accept the trailer road test completed during the skill performance evaluation if trailer types are similar to that of the prospective motor carrier;
- 4. Evaluate the subject driver for those non-driving safety related job tasks associated with each type of trailer that will be used and any other non-driving safety related or job related tasks unique to the operations of the employing motor carrier; and
- 5. Use the subject driver to operate the type of commercial motor vehicle indicated on the intrastate medical waiver only when the driver is in compliance with the conditions and limitations of the waiver.
- G. A driver subject to an intrastate medical waiver, issued by the Director under subsection (A), shall supply each employing motor carrier with a copy of the intrastate medical waiver.
- H. The Department may require the driver applicant to demonstrate the driver applicant's ability to safely operate the commercial motor vehicle the driver intends to drive.
- I. If required by the Department during the application process, a driver applicant shall have a skill performance evaluation performed by a federally-certified state commercial driver license examiner at a Department commercial driver license facility when directed.
- J. If the Director grants an intrastate medical waiver under subsection (A) to the driver applicant, the Department shall mail to the driver applicant and co-applicant motor carrier (if applicable) written approval of the intrastate medical waiver describing the terms, conditions, and limitations of the waiver.
- K. The intrastate medical waiver granted by the Director under subsection (A) shall identify:
 - 1. The power unit (bus, truck, truck tractor) for which the waiver is granted; and
 - 2. The trailer type used in the skill performance evaluation, if applicable, without limiting the waiver to that specific trailer type.
- L. A subject driver may use the intrastate medical waiver with other trailer types if the driver successfully completes:
 - 1. A trailer road test administered by the motor carrier under subsection (F)(3) for each type of trailer, and
 - 2. A non-driving safety related or job related task evaluation administered by the motor carrier under subsection (F)(4).
- M. The intrastate medical waiver granted by the Director under subsection (A) is:
 - 1. Valid for a period of not more than two years from the date of issuance;
 - 2. Renewable 30 days prior to the expiration date; and
 - 3. Transferable from an original motor carrier co-applicant employer to a new motor carrier employer or to the subject driver, as a unilateral applicant if becoming self-employed, upon written notification to the Department's Medical Review Program, P.O. Box 2100, Mail Drop 818Z, Phoenix, AZ 85001-2100, stating the new employer's name and the type of equipment to be driven.
- N. An intrastate medical waiver granted by the Director under subsection (A) to a driver applicant for monocular vision under subsection (E), shall prohibit the subject driver from transporting:
 - 1. Passengers for hire; and

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2. Reportable quantities of hazardous substances, manifested hazardous wastes, and hazardous material required to be placarded.
- O.** A driver subject to an intrastate medical waiver, issued by the Director under subsection (A), shall have the intrastate medical waiver (or a legible copy) in the subject driver's possession while on duty.
- P.** The motor carrier employing a subject driver shall maintain a copy of the intrastate medical waiver in its driver qualification file and retain the copy in the motor carrier's file for a period of three years after the driver's employment is terminated.
- Q.** A driver subject to an intrastate medical waiver, issued by the Director under subsection (A) to an applicant for insulin-dependent diabetes under subsection (D), must comply with the following conditions:
1. Maintain appropriate medical supplies for glucose management while preparing for the operation of a commercial motor vehicle and during its operation. The supplies shall include the following:
 - a. A digital glucose monitor with computerized memory,
 - b. Supplies needed to obtain adequate blood samples and to measure blood glucose,
 - c. Insulin to be used as necessary, and
 - d. An amount of rapidly absorbable glucose to be used as necessary;
 2. Maintain a daily record of actual driving time to correlate with the daily glucose measurements;
 3. Monitor and maintain blood glucose levels in the range of 100 to 400 milligrams per deciliter (mg/dl) prior to and while driving.
 - a. Check glucose before starting to drive and take corrective action if necessary. If glucose is less than 100 mg/dl, take glucose or food and recheck in 30 minutes. Repeat the process until glucose is greater than 100 mg/dl. Do not drive if glucose is less than 100 mg/dl;
 - b. While driving, stop the vehicle in a safe location and check glucose every two to four hours and take appropriate action to maintain it in the range of 100 to 400 mg/dl;
 - c. Have food available at all times when driving. If glucose is less than 100 mg/dl, stop driving and eat. Recheck in 30 minutes and repeat procedure until glucose is greater than 100 mg/dl; and
 - d. If glucose is greater than 400 mg/dl, stop driving until glucose returns to the 100 to 400 mg/dl range. If more than two hours have passed since last insulin injection and eating, take additional insulin. Recheck blood glucose in 30 minutes. Do not resume driving until glucose is less than 400 mg/dl;
 4. Participate in a diabetes education program annually;
 5. Undergo the following evaluations and examinations and submit to the Department's Medical Review Program, P.O. Box 2100, Mail Drop 818Z, Phoenix, AZ 85001-2100, within 10 days of the date of the evaluation or exam:
 - a. A quarterly evaluation completed by a board-certified or board-eligible endocrinologist. A quarterly endocrinologist evaluation shall include a review of the driver's daily glucose logs and glucose levels (from the subject driver's required monitoring device), a comparison of monitoring dates to the driving log to ensure that the subject driver is checking glucose levels prior to operating a commercial motor vehicle, a certifying statement indicating that the subject driver is maintaining a glucose level in the range of 100 to 400 mg/dl while driving a commercial motor vehicle, a certifying statement indicating that the subject driver is maintaining a stable insulin regimen and that the subject driver's quarterly A1c result continues to reflect stable control, reports of any severe hypoglycemic episodes, any hypoglycemic-related hospitalization, and any treatment regimen changes since the last hypoglycemic episode;
 - b. An annual evaluation completed by a board-certified or board-eligible endocrinologist. In addition to the requirements of a quarterly endocrinologist evaluation under subsection (Q)(5)(a), an annual endocrinologist evaluation shall also include a general physical examination, an indication that the driver has continued to participate in a diabetes education program with the last education date provided, a certifying statement indicating that the driver understands how to individually manage and monitor the driver's diabetes mellitus, an indication of the development of, or progression, or both, in diabetes complications (i.e. renal disease, cardiovascular disease, and neurological disease), a list of all medications taken and whether any of the medications may compromise the driver's ability to operate a commercial motor vehicle, the endocrinologist's belief that the driver has demonstrated the ability and willingness to properly manage the driver's diabetes, and a certifying statement indicating that the driver is able to safely operate a commercial motor vehicle while using insulin;
 - c. An annual vision evaluation report, as prescribed under subsection (D)(3). If there is any evidence of diabetic retinopathy, provide annual documentation by an ophthalmologist that the driver does not have unstable proliferative diabetic retinopathy; and
 - d. An annual medical examination report and medical examiner's certificate completed pursuant to 49 CFR 391.43. Provide copies of the endocrinologist evaluation and the vision evaluation report to the medical examiner for review; and
 6. Report the following information to the Department's Medical Review Program, P.O. Box 2100, Mail Drop 818Z, Phoenix, AZ 85001-2100, within two days of occurrence:
 - a. All episodes of severe hypoglycemia, significant complications, or inability to manage diabetes; and
 - b. Any involvement in an accident or any other adverse event in a commercial motor vehicle or personal vehicle, related to an episode of hypoglycemia or hyperglycemia.
- R.** A driver subject to an intrastate medical waiver, issued by the Director under subsection (A) to an applicant for monocular vision under subsection (E), must be physically examined every year and shall submit the following to the Department's Medical Review Program, P.O. Box 2100, Mail Drop 818Z, Phoenix, AZ 85001-2100:
1. A vision examination report issued within the last 90 days from the date the report is received by the Department, as prescribed under subsection (E)(2); and
 2. A current medical examination report and medical examiner's certificate completed pursuant to 49 CFR 391.43 within the past year.
- S.** A driver subject to an intrastate medical waiver, or a driver subject to an intrastate medical waiver jointly with a motor

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carrier co-applicant, may renew an intrastate medical waiver by submitting to the Department's Medical Review Program, P.O. Box 2100, Mail Drop 818Z, Phoenix, AZ 85001-2100, a new intrastate medical waiver application. The intrastate medical waiver application shall contain the following:

1. Name and complete address of the motor carrier currently employing the applicant;
 2. Name and complete address of the subject driver;
 3. Total miles driven under the current intrastate medical waiver;
 4. Number of accidents incurred while driving under the current intrastate medical waiver, including the date of each accident, number of fatalities, number of injuries, and the estimated dollar amount of any property damage;
 5. A current medical examination report and medical examiner's certificate completed pursuant to 49 CFR 391.43;
 6. A current medical examination or evaluation as applicable to the medical condition:
 - a. A current medical waiver evaluation summary, as prescribed under subsection (C)(2), for a driver with a loss of limb or limb impairment;
 - b. A current endocrinologist evaluation, as prescribed under subsection (D)(2), and a current vision evaluation report, as prescribed under subsection (D)(3), for a driver who is an insulin-dependent diabetic; or
 - c. A current vision examination report, as prescribed under subsection (E)(2), for a driver with monocular vision;
 7. A copy of the subject driver's current state motor vehicle driving record for the period of time the current intrastate medical waiver has been in effect;
 8. Notification of any change in the type of tractor the driver will operate;
 9. Subject driver's signature and date signed; and
 10. Motor carrier co-applicant's signature and date signed (if applicable).
- T.** The Director may deny an application for the intrastate medical waiver or may grant the waiver in whole or in part and issue the waiver subject to such terms, conditions, and limitations as the Director deems consistent with the public interest.
- U.** The Director may revoke an intrastate medical waiver after providing the driver subject to an intrastate medical waiver written notice of the proposed revocation and a reasonable opportunity to request a hearing pursuant to the procedure prescribed under 17 A.A.C. 1, Article 5. The Director may revoke an intrastate medical waiver if the:
1. Driver subject to an intrastate medical waiver, or co-applicant (if applicable), or both provided false information in the application,
 2. Driver subject to an intrastate medical waiver, or co-applicant (if applicable), or both failed to comply with the terms and conditions of the intrastate medical waiver, or
 3. Issuance of the intrastate medical waiver resulted in a lower level of safety than before the waiver was granted.
- V.** If the enforcement of any provision of this Section would result in the loss or disqualification of federal funding for any state agency or program, that provision is invalid.

Historical Note

New Section recodified from R17-4-435.06 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 8 A.A.R. 3249, effective July 10, 2002 (Supp. 02-3). Section repealed; new Section made by final rulemaking at 14 A.A.R. 3797, effective November 8, 2008 (Supp. 08-3). Amended by final rulemaking at 17 A.A.R. 1691, effective August 2, 2011 (Supp. 11-3). Amended by final rulemaking at 20 A.A.R. 2382, effective

August 5, 2014 (Supp. 14-3). Amended by final rulemaking at 24 A.A.R. 1549, effective May 1, 2018 (Supp. 18-2).

R17-5-209. Hazardous Materials Transportation: Incorporation of Federal Regulations; Applicability

- A.** Incorporation of federal regulations.
1. As relevant to the transportation of hazardous materials by highway, the Department incorporates by reference, as amended under this Section, the following Parts of the Federal Hazardous Materials Regulations; revised as of October 1, 2016, and no later amendments or editions, as 49 CFR - Transportation, Subtitle B - Other Regulations Relating to Transportation, Chapter I - Pipeline and Hazardous Materials Safety Administration, Department of Transportation:
 - a. Subchapter A - Hazardous Materials and Oil Transportation; Part 107 - Hazardous materials program procedures; and
 - b. Subchapter C - Hazardous Materials Regulations; Parts:
 - i. 171 - General information, regulations, and definitions;
 - ii. 172 - Hazardous materials table, special provisions, hazardous materials communications, emergency response information, training requirements, and security plans;
 - iii. 173 - Shippers - general requirements for shipments and packagings;
 - iv. 177 - Carriage by public highway;
 - v. 178 - Specifications for packagings; and
 - vi. 180 - Continuing qualification and maintenance of packagings.
 2. The material incorporated by reference under this subsection is on file with the Department at 206 S. 17th Avenue, Phoenix, AZ 85007. The incorporated material is published by National Archives and Records Administration, Office of the Federal Register, 8601 Adelphi Road, College Park, MD 20740-6001, and is printed and distributed by the U.S. Government Publishing Office, P.O. Box 979050, St. Louis, MO 63197-9000. The incorporated material can be viewed online at <http://www.ofr.gov> or <https://www.gpo.gov/fdsys> and ordered online by visiting the U.S. Government Online Bookstore at <http://bookstore.gpo.gov>. The International Standard Book Numbers are 9780160935466 for 49 CFR 107, 171, 172, 173, and 177 and 9780160935473 for 49 CFR 178 and 180.
- B.** Application and exceptions.
1. Application.
 - a. Regulations incorporated under subsection (A) apply as amended by subsection (C) to motor carriers, shippers, and manufacturers as defined under A.R.S. § 28-5201.
 - b. Regulations incorporated under subsection (A) also apply to any vehicle owned or operated by the state, a political subdivision, or a state public authority, used to transport a hazardous material, including hazardous substances and hazardous waste.
 2. Exceptions. An authorized emergency vehicle, as defined under A.R.S. § 28-101, is excepted from the provisions of this Section.
- C.** Amendments. The following sections of the Federal Hazardous Materials Regulations, incorporated under subsection (A), are amended as follows:
1. Part 171, General information, regulations, and definitions. Section 171.8, Definitions and abbreviations. Section 171.8 is amended by revising the definitions for

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“Carrier,” “Hazmat employer,” and “Person,” and adding a definition for “Highway” as follows:

“‘Carrier’ means a person engaged in the transportation of passengers or property by highway as a common, contract, or private carrier and also includes the state, a political subdivision, and a state public authority engaged in the transportation of hazardous material.”

“‘Hazmat employer’ means a person who uses one or more employees in connection with: transporting hazardous material; causing hazardous material to be transported or shipped; or representing, marking, certifying, selling, offering, reconditioning, testing, repairing, or modifying containers, drums, or packagings as qualified for use in the transportation of hazardous material. This term includes motor carriers, shippers, and manufacturers defined under A.R.S. § 28-5201 and includes the state, political subdivisions, and state public authorities.”

“‘Highway’ means a public highway defined under A.R.S. § 28-5201.”

“‘Person’ has the same meaning as defined under A.R.S. § 28-5201.”

2. Part 172, Hazardous materials table, special provisions, hazardous materials communications, emergency response information, training requirements, and security plans. Section 172.3, Applicability. Paragraph (a)(2) is amended to read: “Each motor carrier that transports hazardous materials, and each state agency, political subdivision, and state public authority that transports hazardous material by highway.”
3. Part 177, Carriage by public highway.
 - a. Section 177.800, Purpose and scope of this part and responsibility for compliance and training. In paragraph (a), the phrase “by private, common, or contract carriers by motor vehicle” is amended to read, “by a motor carrier operating in Arizona, a state agency, a political subdivision, or a state public authority that transports hazardous material by highway.”
 - b. Section 177.802, Inspection. Section 177.802 is amended to read: “Records, equipment, packagings, and containers under the control of a motor carrier or other persons subject to this part, affecting safety in transportation of hazardous material by motor vehicle, must be made available for examination and inspection by an authorized representative of the Department as prescribed under A.R.S. §§ 28-5204 and 28-5231.”

Historical Note

New Section recodified from R17-4-436 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 8 A.A.R. 3249, effective July 10, 2002 (Supp. 02-3). Amended by final rulemaking at 9 A.A.R. 1867, effective June 3, 2003 (Supp. 03-2). Amended by final rulemaking at 13 A.A.R. 1262, effective May 5, 2007 (Supp. 07-1). Amended by final rulemaking at 17 A.A.R. 1691, effective August 2, 2011 (Supp. 11-3). Amended by final rulemaking at 20 A.A.R. 2382, effective August 5, 2014 (Supp. 14-3). Amended by final rulemaking at 24 A.A.R. 1549, effective May 1, 2018 (Supp. 18-2).

R17-5-210. Motor Carrier Safety: Public Service Corpora-

tion, Political Subdivision of this State that is Engaged in Rendering Public Utility Service, or Railroad Contacting State Officials in an Emergency

- A. A public service corporation, a political subdivision of this state that is engaged in rendering public utility service, or a railroad shall notify Commercial Vehicle Enforcement, through the Arizona Department of Public Safety Duty Office, that an emergency situation under A.R.S. § 28-5234(B) exists. Notification shall be made on a form provided by the Arizona Department of Public Safety and sent by fax transmission to (602) 223-2929 immediately, but in no case longer than three hours from the time the public service corporation, political subdivision of this state that is engaged in rendering public utility service, or railroad determines that the emergency situation exists. The information to be provided includes:
 1. Date of the emergency situation,
 2. Time that the emergency situation started,
 3. Description of the emergency situation,
 4. Location of the emergency situation,
 5. Projected duration of the emergency situation,
 6. Authorized party’s signature for determining that an emergency situation exists,
 7. Name and contact number of responsible party in the field, and
 8. The utility’s self-generated Emergency ID or tracking number.
- B. A public service corporation, a political subdivision of this state that is engaged in rendering public utility service, or a railroad shall maintain supporting documentation for no less than three years from the date of an emergency situation and shall make the supporting documentation available to a special agent upon request. Supporting documentation includes:
 1. A list of drivers involved in the emergency situation;
 2. The duration of the emergency situation;
 3. The off-duty time provided for the affected drivers after the emergency situation concluded; and
 4. Any United States Department of Transportation recordable accidents, as defined under 49 CFR 390.5, which occurred during the emergency situation.
- C. After an emergency situation terminates and a driver returns to the principal place of business, the driver shall not drive a commercial motor vehicle unless the driver remains off duty under 49 CFR 395.

Historical Note

New Section recodified from R17-4-438 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 7 A.A.R. 4259, effective September 13, 2001 (Supp. 01-3). Section repealed by final rulemaking at 8 A.A.R. 3249, effective July 10, 2002 (Supp. 02-3). New Section made by final rulemaking at 11 A.A.R. 862, effective February 1, 2005 (Supp. 05-1). Amended by final rulemaking at 17 A.A.R. 1691, effective August 2, 2011 (Supp. 11-3).

R17-5-211. Motor Carrier Safety: Inspection, Enforcement, Sanction

- A. Scope. This Section applies to any transporter subject to:
 1. R17-5-201 through R17-5-209; and
 2. A.R.S. Title 28, Chapter 14.
- B. Audits.
 1. The Department may conduct an audit for cause or without cause.
 2. The Department may enter the premises of any transporter for the purpose of conducting an audit.
 3. The Department may inspect a motor vehicle:
 - a. Within Arizona at:

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- i. A transporter's place of business, or
 - ii. Any other in-state location, or
 - b. Outside Arizona at a transporter's place of business.
 4. A transporter shall make records available for audit:
 - a. During the transporter's normal business hours, and
 - b. In a specific location as follows:
 - i. The transporter's Arizona place of business, or
 - ii. Either an Arizona location designated by the Director or the transporter's out-of-state place of business.
 5. The Department shall charge a transporter in advance for all expenses to be incurred in performance of an out-of-state audit.
- C.** Violation notification. Within five days after audit completion, the Department shall notify an audited transporter in writing of all violations. The notification shall specify a deadline date for remedy of all violations.
- D.** Obligation to remedy violations. After receipt of a violation notification, a transporter shall remedy all violations by the specified date to comply with:
1. R17-5-201 through R17-5-209; and
 2. A.R.S. Title 28, Chapter 14.
- E.** Noncompliance: Failure to remedy violations. If the Department determines a transporter does not remedy a violation by the date specified in a violation notice, the Department shall initiate further enforcement action as prescribed under A.R.S. §§ 28-5237 and 28-5238.
- F.** Danger to public safety. If the Director determines a written violation report establishes probable cause of danger to public safety, the Director shall issue an order by 5:00 p.m. the next business day suspending the Arizona registration of the motor vehicle owned or leased by the transporter, or a driver's Arizona driver license or nonresident driving privilege.

Historical Note

New Section recodified from R17-4-439 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 7 A.A.R. 4259, effective September 13, 2001 (Supp. 01-3). Amended by final rulemaking at 17 A.A.R. 1691, effective August 2, 2011 (Supp. 11-3). Amended by final rulemaking at 20 A.A.R. 2382, effective August 5, 2014 (Supp. 14-3).

R17-5-212. Motor Carrier Safety: Hearing Procedure

- A.** Scope.
1. This Section applies only to a motor carrier enforcement action under:
 - a. R17-5-201 through R17-5-209; and
 - b. A.R.S. Title 28, Chapter 14.
 2. In an enforcement hearing involving a manufacturer, motor carrier, shipper, or driver under this Section, the Department shall follow the procedures prescribed under 17 A.A.C. 1, Article 5, except as modified under subsections (B) and (C).
- B.** Initiation of proceedings; service.
1. The Director shall initiate a hearing under this Section by:
 - a. Signing and serving a complaint in the form prescribed under subsection (C) that cites a manufacturer, motor carrier, shipper, or driver for an alleged infraction; and
 - b. Submitting to the Department's Executive Hearing Office a copy of the complaint and notification of the date the complaint was served.
 2. The date of service is the date of mailing.
- C.** Complaint; order to show cause.
1. The complaint shall contain the following:
 - a. The Department as the designated petitioner;

- b. The respondent's name and the basis of fact for the complaint, including a listing of any alleged violation of Department statute or rule;
 - c. The relief sought by the Department; and
 - d. A copy of the written violation notice issued by a law enforcement agency to the respondent, if applicable.
2. Upon receipt of a copy of the complaint, the Executive Hearing Office shall issue an order to show cause for a respondent to appear at an administrative hearing to explain why the requested relief should not be granted.
3. The Executive Hearing Office shall hold a hearing under this Section within the time-frame required by statute.
4. The parties may resolve a complaint before the hearing date.
 - a. The parties shall file notice of settlement with the Executive Hearing Office.
 - b. Complaint settlement terminates the right of both petitioner and respondent to receive additional administrative review.

Historical Note

New Section recodified from R17-4-440 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 8 A.A.R. 4230, effective November 15, 2002 (Supp. 02-3). Amended by final rulemaking at 17 A.A.R. 1691, effective August 2, 2011 (Supp. 11-3). Amended by final rulemaking at 24 A.A.R. 1549, effective May 1, 2018 (Supp. 18-2).

ARTICLE 3. PROFESSIONAL DRIVER SERVICES**R17-5-301. Definitions**

In addition to the definitions under A.R.S. §§ 28-101 and 32-2351, the following definitions apply to this Article, unless otherwise specified:

"Activity" means a function or service that is provided by a licensed professional driver training school pursuant to A.R.S. Title 32, Chapter 23 or licensed traffic survival school pursuant to A.R.S. Title 28, Chapter 8, Article 7.1 and that is performed by a professional driver training school instructor or traffic survival school qualified instructor as defined in this Article.

"Applicant" means an individual or school, including principals, requesting in the manner set forth in this Article the issuance or renewal of a license or to become a qualified instructor under A.R.S. Title 28, Chapter 8, Article 7.1 or Title 32, Chapter 23 and this Article.

"Application date" means the date the Department or private entity receives a signed application from an applicant.

"Audit" means a review of the operations, facilities, equipment, and records of a licensee under this Article, which is performed by the Department or private entity under A.R.S. § 28-3411 or 32-2352 to assess and ensure compliance with all applicable federal and state laws and rules.

"Branch" means a licensed professional driver training school's or licensed traffic survival school's business location that is an additional established place of business, but not the school's principal place of business.

"Business day" means a day other than a Saturday, Sunday, or legal state holiday.

"Business manager" means an owner or employee of a licensed school who has primary and sufficient oversight, supervision, and responsibility for all operations necessary to

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Statutory Authority Including Relevant Statutory Definitions

General Authority for Rulemaking

A.R.S. § 28-366. Director; rules

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

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

A.R.S. § 28-962. Vehicles transporting explosives; rules

A. A person operating a vehicle transporting an explosive on a highway shall comply at all times with the following provisions:

1. The vehicle shall be placarded in accordance with the placarding requirements specified in 49 Code of Federal Regulations part 172.
2. The vehicle shall be equipped with a fire extinguisher as required in 49 Code of Federal Regulations part 393.

B. The director shall adopt additional rules governing the transportation of explosives and other dangerous articles by vehicles on the highways as the director deems advisable for the protection of the public.

A.R.S. § 28-2169. Intrastate commercial vehicle registration; required numbers

The department may require by rule that an applicant for registration of a vehicle that is subject to the gross weight fees imposed pursuant to section 28-5432 have a United States department of transportation number and provide to the director a United States department of transportation number and a federal taxpayer identification number issued to the applicant for registration before the vehicle may be registered to travel in this state.

A.R.S. § 28-5204. Administration and enforcement; rules

A. In the administration and enforcement of this chapter, the department of transportation shall adopt:

1. Reasonable rules it deems proper governing the safety operations of motor carriers, including rules governing safety operations of motor carriers, shippers and vehicles transporting hazardous materials, hazardous substances or hazardous wastes and shall prescribe necessary forms. In determining reasonable rules, the department of transportation shall consider:

(a) The nature of the operations and regulation of public service corporations as defined in article XV, sections 2 and 10, Constitution of Arizona.

(b) Rules adopted by the director of environmental quality pursuant to section 49-855.

2. Rules necessary to enforce and administer this chapter, including rules setting forth reasonable procedures to be followed in the enforcement of this chapter and rules adopting transporter safety standards for hazardous materials, hazardous substances and hazardous waste. In adopting the rules, the department shall consider, as evidence of generally accepted safety standards, the publications of the United States department of transportation and the environmental protection agency.

B. Rules adopted by the department of transportation also apply to a manufacturer, shipper, motor carrier and driver.

C. The department of public safety shall and a political subdivision may enforce this chapter and any rule adopted pursuant to this chapter by the department of transportation. A person acting for a political subdivision in enforcing this chapter is required to be certified by the department of public safety as qualified for the enforcement activities.

D. The department may audit records and inspect vehicles that are subject to this chapter.

Specific Statutes

A.R.S. § 28-3223. Original applicant; requirements; expiration; renewal examination

A. In addition to the requirements applicable to all driver license applicants, an original applicant for a class A, B or C license is subject to the following requirements:

1. The applicant shall submit evidence of compliance with medical standards and requirements that the department adopts by rule.

2. The applicant must have held a driver license for at least one year either in this state, any other state or a foreign country.

3. The applicant shall take additional knowledge examinations to demonstrate understanding of the following:

(a) Safety operation rules.

(b) Commercial motor vehicle safety control systems.

(c) Safe vehicle control.

(d) The relationship of cargo to vehicle control.

(e) Basic hazardous materials knowledge.

(f) The objectives and proper procedures for performing vehicle safety inspections.

(g) Air brake systems.

(h) Legal requirements for size, weight and vehicle configurations.

(i) Emergency procedures.

4. In addition to the other requirements of this section, an applicant for a class A driver license shall demonstrate a knowledge and understanding of:

(a) Vehicle coupling and uncoupling.

(b) Unique combination vehicle inspections.

5. The applicant shall take a driving test in a vehicle or vehicle combination that at least meets the minimum size requirements for the class of driver license sought. The driving test shall include a demonstration of familiarity with pretrip inspection procedures.

B. A person possessing a commercial driver license on or before June 30, 2005 shall renew the license within five years according to procedures established by the department.

C. Notwithstanding section 28-3171, the holder of a class A, B or C driver license shall renew the license every five years in a manner prescribed by the department.

D. The department may administer an examination to a renewal applicant for a class A, B or C driver license. This examination on renewal shall include the following:

1. Evidence of compliance with medical standards adopted by the department.

2. Administration of knowledge tests or road tests, or both, as required of an original applicant.

A.R.S. § 28-5201. Definitions

In this chapter, unless the context otherwise requires:

1. "Commercial motor vehicle" means a motor vehicle or combination of motor vehicles that is designed, used or maintained to transport passengers or property in the furtherance of a commercial enterprise on a highway in this state, that is not exempt from the gross weight fees as prescribed in section 28-5432, subsection B and that includes any of the following:
 - (a) A single vehicle or combination of vehicles that has a gross vehicle weight rating of twenty-six thousand one or more pounds and that is used for the purposes of intrastate commerce.
 - (b) A single vehicle or combination of vehicles that has a gross vehicle weight rating of ten thousand one or more pounds and that is used for the purposes of interstate commerce.
 - (c) A school bus.
 - (d) A bus.
 - (e) A vehicle that transports passengers for hire and that has a design capacity for eight or more persons.
 - (f) A vehicle that is used in the transportation of materials found to be hazardous for the purposes of the hazardous materials transportation authorization act of 1994 (49 United States Code sections 5101 through 5128) and that is required to be placarded under 49 Code of Federal Regulations section 172.504, as adopted by the department pursuant to this chapter.
2. "Declared gross weight" has the same meaning prescribed in section 28-5431. If a declaration has not been made, declared gross weight means gross weight.
3. "Gross weight" has the same meaning prescribed in section 28-5431.
4. "Hazardous material" means a substance that has been determined by the United States department of transportation under 49 Code of Federal Regulations to be capable of posing an unreasonable risk to health, safety and property if transported in commerce.
5. "Hazardous substance" means a material and its mixtures or solutions that has been determined by the United States department of transportation under 49 Code of Federal Regulations to be capable of posing an unreasonable risk to health, safety and property if transported in commerce.
6. "Hazardous waste" means a material that is subject to the hazardous waste manifest requirements of the department of environmental quality or the United States environmental protection agency.
7. "Manufacturer" means a person who transports or causes to be transported or shipped by a motor vehicle a material that is represented, marked, certified or sold by a person for transportation in commerce.
8. "Motor carrier" means a person who operates or causes to be operated a commercial motor vehicle on a public highway.
9. "Motor vehicle" means any vehicle, machine, truck tractor, trailer or semitrailer that is propelled or drawn by mechanical power and that is used on a public highway in the transportation of passengers or property in the furtherance of a commercial enterprise.

10. "Person" means a public or private corporation, company, partnership, firm, association or society of persons, the federal government and its departments or agencies, this state or any of its agencies, departments, political subdivisions, counties, towns or municipal corporations or a natural person.

11. "Public highway" means a public street, alley, road, highway or thoroughfare of any kind in this state that is used by the public or that is open to the use of the public as a matter of right, for the purpose of vehicular travel.

12. "Shipper" means a person who offers a material for motor vehicle transportation in commerce.

13. "Transportation" means a movement of person or property by a motor vehicle and any loading, unloading or storage incidental to the movement.

14. "Vehicle combination" has the same meaning prescribed in section 28-5431.

A.R.S. § 28-5235. Notification; denial of vehicle registration and operating privileges; audits

A. A person who owns or leases a vehicle transporting hazardous materials, hazardous substances or hazardous wastes shall notify the director of all vehicles transporting the materials, substances or wastes in a manner prescribed by the director. Each notification shall contain the name and current address of the person transporting the materials, substances or wastes and other information the department requires by rule.

B. The department may deny the vehicle registration, the operating privilege or the nonresident operating privilege for any of the following reasons:

1. Failure to pay any applicable fees.
2. Misrepresentation in the application or notification.
3. Failure to comply with the rules of the department.
4. Failure to make vehicles available for inspection or to make records available for audit.
5. Revocation of an operating privilege within the preceding twelve months.

C. The department shall provide for compliance audits pursuant to this chapter and rules adopted pursuant to this chapter. The department of transportation shall provide for reciprocity of audits with the department of public safety and the United States department of transportation.

A.R.S. § 28-5237. Noncompliance; hearing; suspension of registration or license; civil penalty

A. The director may conduct a hearing if a law enforcement agency authorized to enforce this chapter alleges that probable cause exists that a manufacturer, shipper, motor carrier or driver refuses to comply with section 28-5231 or has failed to comply with this chapter or a rule adopted pursuant to this chapter.

B. If after reviewing the allegations the director determines that probable cause exists to believe that the manufacturer, shipper, motor carrier or driver is responsible, the director shall issue an order to show cause why the director should not impose any of the following:

1. A suspension of the registrations of any motor vehicles owned or leased by the manufacturer, shipper or motor carrier.
2. A suspension of the driver license or nonresident operating privilege of a driver.
3. A civil penalty on the manufacturer, shipper, motor carrier or driver.

C. The manufacturer, shipper, motor carrier or driver shall respond to the order at a hearing held not more than sixty days after service of written notice. The director shall send the notice by certified mail to the address provided to the department in the agency's report alleging the noncompliance.

D. A finding of responsibility requires that all of the following conditions exist, and the hearing is limited to the following:

1. The respondent refuses to comply with the requirements of section 28-5231 or failed to comply with any other provision of this chapter or a rule adopted pursuant to this chapter.
2. The respondent ordered to appear at the hearing is responsible for the noncompliance and is responsible under this chapter or a rule adopted pursuant to this chapter to effect compliance or to remedy the noncompliance.
3. The law enforcement agency submitting the report served written notice on the respondent that noncompliance exists.
4. A reasonable period of time of at least ten but not more than thirty days has been provided to attain compliance.
5. The department of public safety or the department of transportation performed a follow-up inspection or audit.
6. The inspection or audit shows that compliance was not subsequently attained.

E. After consideration of the evidence presented at the hearing and within five days after the hearing, the director shall serve notice of the director's finding and order. If the director enters a finding of responsibility, the director shall both:

1. Impose a civil penalty as prescribed in section 28-5238.
2. Suspend the registrations of any motor vehicles owned or leased by the manufacturer, shipper or motor carrier or suspend the driver license or nonresident operating privilege of a driver.

F. If the manufacturer, motor carrier, shipper or driver fails to appear for a hearing, in addition to any other remedies provided by law, the director shall suspend the registrations of any motor vehicles owned and leased by the manufacturer, shipper or motor carrier or the driver license or the nonresident operating privilege of the driver. The director shall not remove the suspension until the manufacturer, motor carrier, shipper or driver appears for the hearing and all fees required to reinstate vehicle registration or driving privileges prescribed by statute are paid.

A.R.S. § 28-5238. Civil penalty schedule; suspension of registration or license; reinstatement; enforcement

A. If the director imposes a civil penalty on the manufacturer, motor carrier, shipper or driver, the civil penalty is determined pursuant to the following schedule:

1. A minimum civil penalty of one thousand dollars but not more than five thousand dollars, or if the director determines that the manufacturer, motor carrier, shipper or driver failed to attain compliance with a rule relating to hazardous materials, hazardous substances or hazardous wastes, a minimum civil penalty of five thousand dollars but not more than twenty-five thousand dollars.
2. For a second finding of responsibility within a sixty month period involving the same manufacturer, motor carrier, shipper or driver and the same class of violation, as prescribed by subsection E of this section, either:
 - (a) A minimum civil penalty of five thousand dollars but not more than ten thousand dollars.

(b) If the director determines that the manufacturer, motor carrier, shipper or driver failed to attain compliance with a rule relating to hazardous materials, hazardous substances or hazardous wastes, a minimum civil penalty of ten thousand dollars but not more than twenty-five thousand dollars.

3. For a third and any subsequent finding of responsibility within a sixty month period involving the same manufacturer, motor carrier, shipper or driver and the same class of violation, as prescribed by subsection E of this section, either:

(a) A minimum civil penalty of ten thousand dollars but not more than twenty-five thousand dollars.

(b) If the director determines that the manufacturer, motor carrier, shipper or driver failed to attain compliance with a rule relating to hazardous materials, hazardous substances or hazardous wastes, a minimum civil penalty of fifteen thousand dollars but not more than twenty-five thousand dollars.

B. On the third and any subsequent finding of responsibility within a sixty month period involving the same manufacturer, motor carrier, shipper or driver and the same class of violation, in addition to imposing the civil penalties prescribed in subsection A, paragraph 3 of this section, the director shall suspend the registrations of any motor vehicles owned or leased by the manufacturer, shipper or motor carrier or the driver license or nonresident operating privilege of the driver for thirty days, except that in the case of noncompliance the suspension may exceed thirty days until the department of public safety states in writing to the director of the department of transportation that the cause for the finding of responsibility has been remedied.

C. The manufacturer, motor carrier, shipper or driver shall pay the civil penalty imposed in the order to the department no later than ten days after the order is final.

D. If a civil penalty is imposed and if the civil penalty is not paid when due, the director shall suspend the registrations of any motor vehicles owned or leased by the manufacturer, shipper or motor carrier or shall suspend the driver license or nonresident operating privilege of the driver.

E. For the purpose of determining the amount of civil penalty for repeat findings of responsibility for the same class of violation, the director may adopt rules categorizing violations of this chapter or violations of rules adopted under this chapter into the following classes:

1. Equipment.

2. Commodities transport, including hazardous materials, hazardous substances or hazardous wastes.

3. Driver, shipper or manufacturer records or requirements.

4. Other records.

F. In addition to any other requirements imposed in this section, the director shall not reinstate any suspended registrations of the motor vehicles of the manufacturer, shipper or motor carrier or any suspended driver license or nonresident operating privilege of the driver, manufacturer, shipper or motor carrier until both of the following conditions are met:

1. All fees prescribed by statute to reinstate the vehicle registration or driving privileges are paid.

2. Any civil penalty that has been imposed is paid.

G. The director shall immediately deposit, pursuant to sections 35-146 and 35-147, all monies from civil penalties imposed under this chapter in the motor carrier safety revolving fund established by section 28-5203.

H. A city, town or county shall not enact an ordinance or resolution imposing civil penalties against any shipper, manufacturer or motor carrier for a motor carrier safety violation.

I. The attorney general shall enforce this section.

NOTICE OF FINAL RULEMAKING
TITLE 17. TRANSPORTATION
CHAPTER 5. DEPARTMENT OF TRANSPORTATION
COMMERCIAL PROGRAMS

Definitions of Terms

A.A.C. R13-3-701. Definitions

A. The definitions in A.R.S. §§ 28-101 and 41-1701 apply to this Chapter.

B. In this Chapter:

1. “Alter” means adding, modifying, or removing any equipment or component after a tow truck has received a permit decal from the Department, in a manner that may affect the operation of the tow truck, compliance with A.R.S. § 28-1108 and this Chapter, or the health, safety, or welfare of any individual.
2. “Bed assembly” means the part of a tow truck that is located behind the cab, is attached to the frame, and is used to mount a boom assembly, hoist, winch, or equipment for transporting vehicles.
3. “Boom assembly” means a device, consisting of sheaves, one or more winches, and wire rope, that is attached to a tow truck and used to lift or tow another vehicle.
4. “Collision” means an incident involving one or more moving vehicles resulting in damage to a vehicle or its load that requires the completion of a written report of accident under A.R.S. § 28-667(A).
5. “Collision recovery” means initial towing or removing a vehicle involved in a collision from the collision scene.
6. “Denial” means refusal to satisfy a request.
7. “Department” means the Arizona Department of Public Safety.
8. “Director” means the Director of the Arizona Department of Public Safety or the Director’s designee.
9. “Emergency brake” means the electrical, mechanical, hydraulic, or air brake components used to slow or stop a vehicle after a failure of the service brake system.
10. “Flatbed” means an open platform that is located behind the cab and attached to the frame of a truck.
11. “G.V.W.R.” means Gross Vehicle Weight Rating, the value specified by the manufacturer as the fully assembled weight of a single motor vehicle.
12. “Hook” means a steel hook attached to an end of a wire rope or chain.
13. “Parking brake system” means the electrical, mechanical, hydraulic, or air brake components used to hold the tow truck or combination under any condition of loading to prevent movement when parked.
14. “Permit decal” means the non-transferable decal that a tow truck company is required to obtain from the Department before operating a tow truck for the purpose of towing a vehicle.
15. “Person” means the same as in A.R.S. § 1-215.

16. "Power-assisted service brake system" means a service-brake system that is equipped with a booster to supply additional power to the service-brake system by means of air, vacuum, electric, or hydraulic pressure.
17. "Power-operated winch" means a winch that is operated by electrical, mechanical, or hydraulic power.
18. "Service-brake system" means the electrical, mechanical, hydraulic, or air brake components used to slow or stop a vehicle in motion.
19. "Snatch block" means a metal case that encloses one or more pulleys and can be opened to receive a wire rope and redirect energy from a winch.
20. "State" means the state of Arizona.
21. "Steering wheel clamp" means a device used to secure in a fixed position the steering wheel of a vehicle being towed.
22. "Suspension" is the temporary withdrawal of the tow truck permit decal because the Department determines the tow truck or tow truck agent is not in compliance with one or more requirements of this Chapter.
23. "Tow bar" means a device attached to the rear of a tow truck to secure a towed vehicle to the tow truck by chains, straps, or hooks.
24. "Tow plate" means a solid metal support attached to the rear of a tow truck to secure a towed vehicle to the tow truck by chains, straps, or hooks.
25. "Tow sling" means two or more flexible straps attached to the wire rope or boom assembly of a tow truck to hoist a towed vehicle by chains, straps, or hooks.
26. "Tow truck" means a motor vehicle designed, manufactured, or altered to tow or transport one or more vehicles. The following are tow trucks:
 - a. A truck with a flatbed equipped with a winch;
 - b. A truck drawing a semi-trailer or trailer equipped with a winch;
 - c. A motor vehicle that has a boom assembly or hoist permanently attached to its bed or frame;
 - d. A motor vehicle that has a tow sling, tow plate, tow bar, under-lift, or wheel-lift attached to the rear of the vehicle; and
 - e. A truck-tractor drawing a semi-trailer equipped with a winch.
27. "Tow truck agent" means an individual who operates a tow truck on behalf of a tow truck company, and includes owners, individuals employed by the tow truck company, and independent contractors.
28. "Tow truck company" means a person that owns, leases, or operates a tow truck that travels on a street or highway to transport a vehicle, including, but not limited to a vehicle that is damaged, disabled, unattended, repossessed, or abandoned.
29. "Truck-tractor protection valve" means a device that supplies air to the service brake system of a trailer to release the service brakes while the trailer is being towed by a truck- tractor, or to activate the service brakes if the supply of air from the truck-tractor to the trailer is disconnected or depleted.

30. "Under-lift" means an electrical, mechanical, or hydraulic device attached to the rear of a tow truck used to lift the front or rear of a vehicle by its axles or frame.
31. "Vehicle" means the same as in A.R.S. § 28-101.
32. "Wheel lift" means an electrical, hydraulic, or mechanical device attached to the rear of a tow truck used to lift the front or rear of a vehicle by its tires or wheels.
33. "Winch" means a device used for winding or unwinding wire rope.
34. "Wire rope" means flexible steel or synthetic strands that are twisted or braided together and may surround a hemp or wire core.
35. "Work lamp" means a lighting system that is mounted on a tow truck capable of illuminating an area to the rear of the tow truck.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 1735, effective July 1, 2006 (Supp. 06-2). At the Department's request, the A.R.S. citation was corrected in subsection (B)(1) as Laws 2015, Ch. 265 transferred duties relating to towing services; Office file number M16-202 (Supp. 16-3). Amended by final expedited rulemaking at 25 A.A.R. 844, effective March 19, 2019 (Supp. 19-1).

A.R.S. § 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 eighty or fewer inches in width.
 - (iii) Has an unladen weight of two thousand five hundred pounds or less.
 - (iv) Travels on four or more nonhighway tires.
 - (v) Has a steering wheel for steering control.

- (vi) Has a rollover protective structure.
 - (vii) Has an occupant retention system.
4. “Authorized emergency vehicle” means any of the following:
- (a) A fire department vehicle.
 - (b) A police vehicle.
 - (c) An ambulance or emergency vehicle of a municipal department or public service corporation that is designated or authorized by the department or a local authority.
 - (d) Any other ambulance, fire truck or rescue vehicle that is authorized by the department in its sole discretion and that meets liability insurance requirements prescribed by the department.
5. “Autocycle” means a three-wheeled motorcycle on which the driver and passengers ride in a fully or partially enclosed seating area that is equipped with a roll cage, safety belts for each occupant and antilock brakes and that is designed to be controlled with a steering wheel and pedals.
6. “Automotive recycler” means a person that is engaged in the business of buying or acquiring a motor vehicle solely for the purpose of dismantling, selling or otherwise disposing of the parts or accessories and that removes parts for resale from six or more vehicles in a calendar year.
7. “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.
8. “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.
9. “Board” means the transportation board.
10. “Bus” means a motor vehicle designed for carrying sixteen or more passengers, including the driver.
11. “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.
12. “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.
13. “Certificate of title” means a paper document or an electronic record that is issued by the department and that indicates ownership of a vehicle.
14. “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.
15. “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.

16. "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.

17. "County highway" means a public road that is constructed and maintained by a county.

18. "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.

19. "Department" means the department of transportation acting directly or through its duly authorized officers and agents.

20. "Digital network or software application" has the same meaning prescribed in section 28-9551.

21. "Director" means the director of the department of transportation.

22. "Drive" means to operate or be in actual physical control of a motor vehicle.

23. "Driver" means a person who drives or is in actual physical control of a vehicle.

24. "Driver license" means a license that is issued by a state to an individual and that authorizes the individual to drive a motor vehicle.

25. "Electric bicycle" means a bicycle or tricycle that is equipped with fully operable pedals and an electric motor of less than seven hundred fifty watts and that meets the requirements of one of the following classes:

(a) "Class 1 electric bicycle" means a bicycle or tricycle that is equipped with an electric motor that provides assistance only when the rider is pedaling and that ceases to provide assistance when the bicycle or tricycle reaches the speed of twenty miles per hour.

(b) "Class 2 electric bicycle" means a bicycle or tricycle that is equipped with an electric motor that may be used exclusively to propel the bicycle or tricycle and that is not capable of providing assistance when the bicycle or tricycle reaches the speed of twenty miles per hour.

(c) "Class 3 electric bicycle" means a bicycle or tricycle that is equipped with an electric motor that provides assistance only when the rider is pedaling and that ceases to provide assistance when the bicycle or tricycle reaches the speed of twenty-eight miles per hour.

26. "Electric miniature scooter" means a device that:

(a) Weighs less than thirty pounds.

(b) Has two or three wheels.

(c) Has handlebars.

(d) Has a floorboard on which a person may stand while riding.

(e) Is powered by an electric motor or human power, or both.

(f) Has a maximum speed that does not exceed ten miles per hour, with or without human propulsion, on a paved level surface.

27. "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.

28. "Electric standup scooter":

(a) Means a device that:

(i) Weighs less than seventy-five pounds.

(ii) Has two or three wheels.

(iii) Has handlebars.

(iv) Has a floorboard on which a person may stand while riding.

(v) Is powered by an electric motor or human power, or both.

(vi) Has a maximum speed that does not exceed twenty miles per hour, with or without human propulsion, on a paved level surface.

(b) Does not include an electric miniature scooter.

29. "Evidence" includes both of the following:

(a) A display on a wireless communication device of a department-generated driver license, nonoperating identification license, vehicle registration card or other official record of the department that is presented to a law enforcement officer or in a court or an administrative proceeding.

(b) An electronic or digital license plate authorized pursuant to section 28-364.

30. "Farm" means any lands primarily used for agriculture production.

31. "Farm tractor" means a motor vehicle designed and used primarily as a farm implement for drawing implements of husbandry.

32. "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.

33. "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.

34. "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.

35. "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.

36. “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.

37. “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.

38. “Local authority” means any county, municipal or other local board or body exercising jurisdiction over highways under the constitution and laws of this state.

39. “Manufacturer” means a person engaged in the business of manufacturing motor vehicles, trailers or semitrailers.

40. “Moped” means a bicycle, not including an electric bicycle, an electric miniature scooter or an electric standup scooter, that is equipped with a helper motor if the vehicle has a maximum piston displacement of fifty cubic centimeters or less, a brake horsepower of one and one-half or less and a maximum speed of twenty-five miles per hour or less on a flat surface with less than a one percent grade.

41. “Motorcycle” means a motor vehicle that has a seat or saddle for the use of the rider and that is designed to travel on not more than three wheels in contact with the ground but excludes a tractor, an electric bicycle, an electric miniature scooter, an electric standup scooter and a moped.

42. “Motor driven cycle” means a motorcycle, including every motor scooter, with a motor that produces not more than five horsepower but does not include an electric bicycle, an electric miniature scooter or an electric standup scooter.

43. “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.

44. "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 scrap vehicle, a personal delivery device, a personal mobile cargo carrying device, a motorized wheelchair, an electric personal assistive mobility device, an electric bicycle, an electric miniature scooter, an electric standup scooter or a motorized skateboard. For the purposes of this subdivision:

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

(ii) "Motorized wheelchair" means a self-propelled wheelchair that is used by a person for mobility.

45. "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.

46. "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.

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

48. "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.

49. "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.

50. "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.

51. "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.

52. "Personal delivery device":

- (a) Means a device that is both of the following:
 - (i) Manufactured for transporting cargo and goods in an area described in section 28-1225.
 - (ii) Is equipped with automated driving technology, including software and hardware, that enables the operation of the device with the remote support and supervision of a human.
- (b) Does not include a personal mobile cargo carrying device.

53. "Personal mobile cargo carrying device" means an electronically powered device that:

- (a) Is operated primarily on sidewalks and within crosswalks and that is designed to transport property.
- (b) Weighs less than eighty pounds, excluding cargo.
- (c) Operates at a maximum speed of twelve miles per hour.
- (d) Is equipped with technology to transport personal property with the active monitoring of a property owner and that is primarily designed to remain within twenty-five feet of the property owner.
- (e) Is equipped with a braking system that when active or engaged enables the personal mobile cargo carrying device to come to a controlled stop.

54. "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.

55. "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.

56. "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.

57. "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.
58. "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.
59. "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.
60. "Scrap metal dealer" has the same meaning prescribed in section 44-1641.
61. "Scrap vehicle" has the same meaning prescribed in section 44-1641.
62. "Semitrailer" means a vehicle that is with or without motive power, other than a pole trailer or single-axle tow dolly, that is designed for carrying persons or property and for being drawn by a motor vehicle and that is constructed so that some part of its weight and that of its load rests on or is carried by another vehicle. For the purposes of this paragraph, "pole trailer" has the same meaning prescribed in section 28-601.
63. "Single-axle tow dolly" means a nonvehicle device that is drawn by a motor vehicle, that is designed and used exclusively to transport another motor vehicle and on which the front or rear wheels of the drawn motor vehicle are mounted on the tow dolly while the other wheels of the drawn motor vehicle remain in contact with the ground.
64. "State" means a state of the United States and the District of Columbia.
65. "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.
66. "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.
67. "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.
68. "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.
69. "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.

70. "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.

71. "Trailer" means a vehicle that is with or without motive power, other than a pole trailer or single-axle tow dolly, that is designed for carrying persons or property and for being drawn by a motor vehicle and that is constructed so that no part of its weight rests on the towing vehicle. A semitrailer equipped with an auxiliary front axle commonly known as a dolly is deemed to be a trailer. For the purposes of this paragraph, "pole trailer" has the same meaning prescribed in section 28-601.

72. "Transportation network company" has the same meaning prescribed in section 28-9551.

73. "Transportation network company vehicle" has the same meaning prescribed in section 28-9551.

74. "Transportation network service" has the same meaning prescribed in section 28-9551.

75. "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.

76. "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.

77. "Vehicle":

(a) Means a device in, on or by which a person or property is or may be transported or drawn on a public highway.

(b) Does not include:

(i) Electric bicycles, electric miniature scooters, electric standup scooters and devices moved by human power.

(ii) Devices used exclusively on stationary rails or tracks.

(iii) Personal delivery devices.

(iv) Scrap vehicles.

(v) Personal mobile cargo carrying devices.

78. "Vehicle transporter" means either:

(a) A truck tractor capable of carrying a load and drawing a semitrailer.

(b) A truck tractor with a stinger-steered fifth wheel capable of carrying a load and drawing a semitrailer or a truck tractor with a dolly mounted fifth wheel that is securely fastened to the truck tractor at two or more points and that is capable of carrying a load and drawing a semitrailer.

A.R.S. § 28-3001. Definitions

In this chapter, unless the context otherwise requires:

1. "Cancellation" means the annulment or termination of a driver license because of an error or defect or because the licensee is no longer entitled to the license.

2. "Commercial driver license" means a license that is issued to an individual and that authorizes the individual to operate a class of commercial motor vehicles.

3. "Commercial motor vehicle" means a motor vehicle or combination of motor vehicles that is used in commerce to transport passengers or property and that includes any of the following:
- (a) A motor vehicle or combination of motor vehicles that has a gross combined weight rating of twenty-six thousand one or more pounds inclusive of a towed unit with a gross vehicle weight rating of more than ten thousand pounds.
 - (b) A motor vehicle that has a gross vehicle weight rating of twenty-six thousand one or more pounds.
 - (c) A bus.
 - (d) A motor vehicle or combination of motor vehicles that is used in the transportation of materials found to be hazardous for the purposes of the hazardous materials transportation authorization act of 1994 (49 United States Code sections 5101 through 5128) and is required to be placarded under 49 Code of Federal Regulations section 172.504, as adopted by the department pursuant to chapter 14 of this title.
4. "Conviction" has the same meaning prescribed in section 28-101 and also means a final conviction or judgment, including an order of a juvenile court finding that a juvenile has violated a provision of this title or has committed a delinquent act that if committed by an adult constitutes any of the following:
- (a) Criminal damage to property pursuant to section 13-1602, subsection A, paragraph 1.
 - (b) A felony offense in the commission of which a motor vehicle was used, including theft of a motor vehicle pursuant to section 13-1802, unlawful use of means of transportation pursuant to section 13-1803 or theft of means of transportation pursuant to section 13-1814.
 - (c) A forfeiture of bail or collateral deposited to secure a defendant's appearance in court that has not been vacated.
5. "Disqualification" means a prohibition from obtaining a commercial driver license or driving a commercial motor vehicle.
6. "Employer" means a person, including the United States, a state or a political subdivision of a state, that owns or leases a commercial motor vehicle or that assigns a person to operate a commercial motor vehicle.
7. "Endorsement" means an authorization that is added to an individual's driver license and that is required to permit the individual to operate certain types of vehicles.
8. "Foreign" means outside the United States.
9. "Gross vehicle weight rating" means the weight that is assigned by the vehicle manufacturer to a vehicle and that represents the maximum recommended total weight including the vehicle and the load for the vehicle.
10. "Judgment" means a final judgment and any of the following:
- (a) The finding by a court that an individual is responsible for a civil traffic violation.
 - (b) An individual's admission of responsibility for a civil traffic violation.
 - (c) The voluntary or involuntary forfeiture of deposit in connection with a civil traffic violation.
 - (d) A default judgment entered by a court pursuant to section 28-1596.
11. "License class" means, for the purpose of determining the appropriate class of driver license required for the type of motor vehicle or vehicle combination a driver intends to operate or is operating, the class of driver license prescribed in section 28-3101.

12. "Nondomiciled commercial driver license" means a commercial driver license issued to an individual domiciled in a foreign country or to an individual domiciled in another state if that state is prohibited from issuing commercial driver licenses.

13. "Original applicant" means any of the following:

- (a) An applicant who has never been licensed or cannot provide evidence of licensing.
- (b) An applicant who is applying for a higher class of driver license than the license currently held by the applicant.
- (c) An applicant who has a license from a foreign country.

14. "Revocation" means that the driver license and driver's privilege to drive a motor vehicle on the public highways of this state are terminated and shall not be renewed or restored, except that an application for a new license may be presented and acted on by the department after one year from the date of revocation.

15. "State of domicile" means the state or jurisdiction where a person has the person's true, fixed and permanent home and principal residence and to which the person has the intention of returning after an absence.

16. "Suspension" means that the driver license and driver's privilege to drive a motor vehicle on the public highways of this state are temporarily withdrawn during the period of the suspension.

17. "Vehicle combination" means a motor vehicle and a vehicle in excess of ten thousand pounds gross vehicle weight that it tows, if the combined gross vehicle weight rating is more than twenty-six thousand pounds.

A.R.S. § 28-3103. Driver license endorsements

A. A driver license applicant shall obtain the following endorsements to the applicant's driver license and shall submit to an examination appropriate to the type of endorsement if the applicant operates one or more of the following vehicles:

- 1. A motorcycle endorsement for operation of a motorcycle if the applicant qualifies for a class M license and if the applicant qualifies for or has a class A, B, C, D or G license.
- 2. A hazardous materials endorsement on a class A, B or C license for operation of a vehicle that transports hazardous materials, wastes or substances in a quantity and under circumstances that require the placarding or marking of the transport vehicle as required by the department's safety rules prescribed pursuant to chapter 14 of this title. The department or an outside source authorized by the department and approved by the transportation security administration may:
 - (a) Conduct background checks in accordance with the transportation security administration procedures.
 - (b) Require that all hazardous materials endorsement applicants submit fingerprints.
- 3. A double-triple trailer endorsement on a class A license for operation of a vehicle towing double or triple trailers.
- 4. A passenger vehicle endorsement on a class A, B or C license for operation of a bus designed to transport sixteen or more passengers, including the driver, or a school bus.
- 5. A tank vehicle endorsement on a class A, B or C license for operation of a tank vehicle. For the purposes of this paragraph, "tank vehicle" means a commercial motor vehicle that is designed to transport a liquid or gaseous material within a tank that is either permanently or temporarily attached to the vehicle or chassis, including a cargo tank and a portable tank and excluding a portable tank having a rated capacity under one thousand gallons.

6. A school bus endorsement on a class A, B or C license for operation of a school bus. Applicants shall successfully complete both a written knowledge test and a driving skills test to obtain a school bus endorsement.

B. When applying for a commercial driver license endorsement pursuant to article 5 of this chapter, the applicant shall successfully complete the skills portion of the examination in a motor vehicle or vehicle combination applicable to the endorsement.

C. On notification by the transportation security administration that an individual's authorization to hold a hazardous materials endorsement has been terminated, the department shall immediately cancel the hazardous materials endorsement on the driver's commercial driver license.

A.R.S. § 28-5241. Out-of-service orders; violation; civil penalty; definition

A. A motor carrier shall not require or permit a driver:

1. To operate a commercial motor vehicle that is subject to an out-of-service order until all repairs required by the out-of-service order have been satisfactorily completed.

2. Who is subject to an out-of-service order to operate a commercial motor vehicle until the reason for the out-of-service order has been remedied.

B. A driver:

1. Shall not operate a commercial motor vehicle that is subject to an out-of-service order until all repairs required by the out-of-service order have been satisfactorily completed.

2. Who is subject to an out-of-service order shall not operate a commercial motor vehicle until the reason for the out-of-service order has been remedied.

C. Notwithstanding section 28-5240, a violation of this section is a civil traffic violation.

D. The court shall impose:

1. On a driver who violates or fails to comply with an out-of-service order a civil penalty of:

(a) At least two thousand five hundred dollars for an initial violation or failure.

(b) Five thousand dollars for a subsequent violation or failure.

2. A civil penalty of at least two thousand seven hundred fifty dollars and not more than twenty-five thousand dollars on a motor carrier who violates an out-of-service order or who requires or permits a driver to violate or fail to comply with an out-of-service order.

E. In addition to other penalties prescribed by this chapter, if a motor carrier or driver is found responsible for a violation of this section, the motor carrier or driver is subject to disqualification pursuant to section 28-3312.

F. For the purposes of this section, "out-of-service order" means a declaration by a specialty officer of the department or a law enforcement officer authorized pursuant to section 28-5204 that a driver, motor vehicle or motor carrier is out of service pursuant to this chapter.

NOTICE OF FINAL RULEMAKING
TITLE 17. TRANSPORTATION
CHAPTER 5. DEPARTMENT OF TRANSPORTATION
COMMERCIAL PROGRAMS

Material Incorporated by Reference

R17-5-202. Motor Carrier Safety: Incorporation of Federal Regulations; Applicability

In this Section, the Department incorporates by reference the following parts of the *Code of Federal Regulations*, revised as of October 1, 2020:

49 CFR [40](#), [379](#), [382](#), [383](#), [385](#), [390](#), [391](#), [392](#), [393](#), [395](#), [396](#), [397](#), and [399](#);

R17-5-209. Hazardous Materials Transportation: Incorporation of Federal Regulations; Applicability

In this Section, the Department incorporates by reference the following parts of the *Code of Federal Regulations*, revised as of October 1, 2020:

49 CFR [107](#), [171](#), [172](#), [173](#), [177](#), [178](#), and [180](#)



Arizona Farm Bureau Federation

325 S. Higley Rd, Suite 210
Gilbert, AZ 85296

June 3, 2021

Rules and Policy Development
Department of Transportation
c/o Candace Olson
206 S. 17th Ave., Mail Drop 180A
Phoenix, AZ 85007

RE: Notice of Rulemaking Docket Opening: 27 A.A.R. 676, April 30, 2021

To Whom it May Concern,

On behalf of nearly 2,500 agricultural members across the state, the Arizona Farm Bureau appreciates this opportunity to comment on the proposed rule changes removing the farm vehicle exemption from R17-5-203 and -206. We do not believe that farm vehicles should be required to obtain an active USDOT number and recommend that this portion of the proposed changes be rejected.

Arizona defines a “farm vehicle” as a vehicle that is used for commercial farming or stock raising, controlled by the farm vehicle owner, family member, or employee, used to transport agricultural products, machinery, or supplies, and not used as a common or contract motor carrier. ARS 28-2514. The current rule exempts farm vehicles from those commercial vehicles that are required to file Motor Carrier Identification Reports or obtain active USDOT numbers. This proposed rulemaking would remove that exemption. We believe this poses an unnecessary burden for farm vehicles, which are private and not-for-hire.

We appreciate that the intent behind this change is to provide additional clarity and consistency between interstate and intrastate farm vehicle hauling requirements. However, we are concerned that this change will actually bring about more confusion for farmers and ranchers. The most common configuration of a farm vehicle is a pickup truck with a gooseneck trailer. Sometimes, just the size of the vehicle, and that vehicle’s gross vehicle weight rating, will determine whether that truck is a commercial motor vehicle that requires a USDOT number. If a three-quarter ton pickup truck can haul a trailer without needing a USDOT number, it is confusing and unhelpful if a one-ton pickup truck hauling the exact same trailer will need a USDOT number – especially when, as is commonly the case, both the three-quarter and one-ton trucks are also what the farmer relies on for personal use.

The example above also illustrates that obtaining a USDOT number does not secure any appreciable safety benefit for farm vehicles. The same trailer and load can be hauled by substantially similar trucks, yet one requires a USDOT number and the other does not. Moreover, light and medium duty farm vehicles, such as the ones in question, already have considerably more safety components precisely

because they are also used as personal vehicle. Unsafe haulers put all of us at risk, and we agree that habitually unsafe operators need to be held accountable. However, we believe that ADOT has in place the tools to do so without requiring farm vehicles to obtain a USDOT number. We have yet to see substantive data that supports the idea that requiring a USDOT number is necessary to improve the safety of operation for farm vehicles. Without such evidence that a change is necessary, we believe that the exemption should remain.

Finally, we note that Arizona is well within its authority to provide an exemption to the USDOT numbering requirement for all farm vehicles, regardless of weight. There are several other states in the U.S. with exemptions similar to what Arizona currently has in place including: [Iowa](#), [Minnesota](#), [Montana](#), and [Louisiana](#). Maintaining the farm vehicle exemption does not jeopardize the integrity of Arizona's transportation rules.

Agriculture is a vibrant and vital industry in Arizona, and our ability to safely and efficiently haul goods from one place to another is paramount to maintaining our industry's success. Thank you for considering our concerns on this important issue. We appreciate our strong partnership with ADOT and look forward to continuing to work together for the good of our industry.

Sincerely,

A handwritten signature in black ink, appearing to read "Chelsea McGuire". The signature is fluid and cursive, with a large initial "C" and "M".

Chelsea McGuire, Government Relations Director
Arizona Farm Bureau Federation

DEPARTMENT OF TRANSPORTATION

Title 17, Chapter 4, Department of Transportation - Title, Registration, and Drivers Licenses

Amend: R17-4-508, R17-4-701, R17-4-702, R17-4-708, R17-4-709



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - REGULAR RULEMAKING

MEETING DATE: November 2, 2021

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

FROM: Council Staff

DATE: October 7, 2021

SUBJECT: DEPARTMENT OF TRANSPORTATION
Title 17, Chapter 4 - Title, Registration, and Drivers Licenses, Article 5, Article 7

Amend: R17-4-508, R17-4-701, R17-4-702, R17-4-708, R17-4-709

Summary:

The regular rulemaking from the Department of Transportation (Department) seeks to amend rules in Title 17, Chapter 4, Article 5 relating to Safety and Article 7, relating to Hazardous Materials Endorsement (HME). The Department includes a detailed justification for this rulemaking in Item 6 of the Preamble. The Department states that the purpose of revising these rules has two primary objectives: (1) to ensure consistency and currency with the 2020 *Code of Federal Regulations*, specifically by including where a search may be performed to locate a certified medical examiner and by incorporating the 2020 edition of 49 CFR 1572 for HMEs; and (2) to ensure that the requirements under the Arizona Administrative Procedure Act and the Office of the Secretary of State for consistency of language, office type, and rulemaking format are met.

The Department is requesting an immediate effective date for this regular rulemaking pursuant to A.R.S. § 41-1032(A) to preserve the public peace, health and safety, and to avoid a violation of federal law or regulation or state law.

The Department received an exception from Executive Order 2020-02 to initiate this rulemaking on July 16, 2020 and final approval on August 6, 2021.

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

Yes. The Department cites both general and specific statutory authority for 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. **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 a study in conducting this regular rulemaking.

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

The Department anticipates that the economic impact of these rules is minimal and does not expect this rulemaking to create a significant increase in costs or benefits to the agency or to applicants for a commercial driver's license (CDL) or hazardous materials endorsement (HME) since the purpose of this rulemaking is generally to update information to be consistent with current federal regulations and current program practices. There are no new fees associated with this rulemaking and costs imposed for the HME have remained the same since the 2018 rulemaking. The fee for the U.S. Transportation Security Administration (TSA) HME Security Threat Assessment is \$86.50.

The benefits of this rulemaking include increased clarity and reduction of confusion for an agency, business, or person. In addition, this rulemaking will keep the state consistent with federal regulations, which allow the state to be eligible for federal funds. The Department of Public Safety (DPS) administers and enforces the Federal Motor Carrier Safety Assistance Program (MCSAP) throughout the State of Arizona. For FY 2021, DPS is able to apply for an estimated \$10,000,000 - \$12,000,000 in total federal funding from the Federal Motor Carrier Administration (FMCSA).

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

In rulemakings, the Department routinely adopts the least costly and least burdensome options for any process or procedure required of the regulated public or industry. However, each state is required under 49 CFR 384.301 to adopt and carry out a program for testing and ensuring the fitness of individuals to operate commercial motor vehicles consistent with the minimum standards prescribed by the Secretary of Transportation under 49 U.S.C. 31305(a) as soon as practical, or an amount of up to 5 percent of the state's federal-aid highway funds apportioned under each of sections 104(b)(1), (b)(3), and (b)(4) of 23 U.S.C. may be withheld from the state for noncompliance. Based on

amounts traditionally received by the Department, this amount could reach approximately \$30 million depending on the actual appropriation. Therefore, to the extent permitted by federal law, the Department states that these rules impose the least burden and costs to regulated persons.

6. What are the economic impacts on stakeholders?

The Department does not expect this rulemaking to create a significant increase or decrease in costs or benefits to the agency since the rulemaking is generally intended to update the terminology and practices to be consistent with the federal motor carrier safety and hazardous materials regulations incorporated by reference in 17 A.A.C. Chapter 5, Article 2, and to update the incorporation by reference of 49 CFR 1572 in 17 A.A.C. Chapter 4, Article 7, and make conforming changes.

The Department anticipates that political subdivisions of this State may incur minimal to substantial costs only when the agency either pays for or provides the medical evaluations required under 49 USC 391.43 to their employees who hold a CDL or pays for their employee's TSA HME Security Threat Assessment.

The rules support the public interest and the interests of concerned parties by ensuring that all federal motor carrier safety and hazardous materials regulations and requirements of motor carriers are uniformly applied and enforced. The public benefits when all motor carriers remain in compliance with these rules, resulting in increased public safety, clarity, conciseness, understandability, and the reduction of the possibility of confusion for a business or person. ADOT has expanded the availability of offices that may perform CDL transactions which may allow CDL holders to have fewer expenses involved with the expanded capability of going to an office much closer to their location.

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

No. As the Department indicates in Item 10 of the Preamble, the Department made technical, non-substantive changes to the rules between the Notice of Proposed Rulemaking and the Notice of Final Rulemaking. Specifically, these corrections included removing capitalization from hazardous materials endorsement and removing the phrase "Authorized Third Party Customer Service." These changes do not result in rules that are "substantially different" pursuant to A.R.S. § 41-1025.

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

No. The Department did not receive any comments regarding this rulemaking.

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

No. The Department indicates that while these rules concern requirements for CDL and HME general permit applicants, these rules do not require issuance of those permits.

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

The Department indicates in item 12b of the Preamble that federal regulations in 49 CFR 383, 390, 391, and 1572 are applicable to certain rules that are the subject of this rulemaking. The Department states that these rules are in accordance with federal regulations and are not more stringent.

11. **Conclusion**

In this regular rulemaking, the Department seeks to amend the rules regarding safety and hazardous materials endorsements to incorporate parts of the 2020 *Code of Federal Regulations*, as well as to ensure consistent language, updated office type, and the rulemaking format and style requirements of the Arizona Administrative Procedure Act and the Office of the Secretary of State. Council staff finds that the Department demonstrates justification for an immediate effective date pursuant to A.R.S. § 41-1032(A)(2). Council staff recommends approval of this regular rulemaking with an immediate effective date.

Director's Office

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

August 25, 2021

VIA EMAIL: grrc@azdoa.gov

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

Re: Department of Transportation, 17. A.A.C. 4, Articles 5 and 7, Regular Rulemaking

Dear Chairperson Nicole Sornsins:

The Arizona Department of Transportation submits the accompanying final rule package for consideration by the Governor's Regulatory Review Council. The following information is provided to comply with R1-6-201(A)(1):

- a. The rulemaking record closed on June 3, 2021, and written public comments were not received on these rules;
- b. The rulemaking activity does not relate to a five-year report, but one was completed and submitted to the Council in July 2021 after this rulemaking began and was taken in consideration;
- c. The rulemaking does not establish a new fee;
- d. The rulemaking does not increase an existing fee;
- e. An immediate effective date is requested for these rules under A.R.S. § 41-1032;
- f. The preamble discloses that the Department did not review any studies relevant to the rules and did not rely on any studies in its evaluation of or justification for the rules;
- g. No new full-time employees are necessary to implement and enforce the rules;
- h. Documents included in this final rule package are as follows:
 1. Signed cover letter;
 2. Notice of Final Rulemaking, including the preamble, table of contents, and text of each rule;
 3. Economic, Small Business and Consumer Impact Statement;
 4. General authorizing statutes and specific statutes, including relevant statutory definitions;
 5. Definitions of terms;
 6. Material incorporated by reference;
 7. Request for, and approval of, the Department's exception from the rulemaking moratorium; and
 8. Final approval of the rules from the Office of the Governor.

Sincerely,



John S. Halikowski
Director

NOTICE OF FINAL RULEMAKING
TITLE 17. TRANSPORTATION
CHAPTER 4. DEPARTMENT OF TRANSPORTATION
TITLE, REGISTRATION, AND DRIVER LICENSES

PREAMBLE

<u>1. Article, Part, or Section Affected (as applicable)</u>	<u>Rulemaking Action</u>
R17-4-508	Amend
R17-4-701	Amend
R17-4-702	Amend
R17-4-708	Amend
R17-4-709	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. §§ 28-366 and 28-5204

Implementing statute: A.R.S. §§ 28-3103, 28-3159(A)(3), and 28-3223

3. The effective date of the rule:

Month X, 2021 (To be completed by the *Register* Editor with an immediate effective date.)

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

The Arizona Department of Transportation (ADOT) requests that this rulemaking be effective immediately on filing with the Office of the Secretary of State, as permitted under A.R.S. § 41-1032, in order to:

Preserve the public peace, health, and safety. These rules are made in connection with the required incorporation by reference of the federal motor carrier safety and hazardous materials regulations in 17 A.A.C. Chapter 5, Article 2, thus ensuring there is a consistency between ADOT's regulations, state statutes, and the federal regulations. These changes allow for a greater understanding by commercial driver license (CDL) applicants of what is required of them as it pertains to their physical qualifications and, when applicable, eligibility for a hazardous materials endorsement (HME). These regulations safeguard the public by making sure there are healthy and safe CDL holders; and

Avoid a violation of federal law or regulation or state law. ADOT is statutorily required to administer the driver licensing and medical evaluation activities required of commercial motor vehicle drivers under A.R.S. Title 28, Chapter 8, and these rules. ADOT is required under A.R.S. § 28-5204(A)(2) to consider, as evidence of generally accepted safety standards, the publications of the United States Department of Transportation and the Environmental Protection Agency

when adopting rules necessary to administer and enforce A.R.S. Title 28, Chapter 14. 49 CFR 384 requires that each state comply with the provisions of section 12009(a) of the Commercial Motor Vehicle Safety Act of 1986 (49 U.S.C. 31311(a)), and adopt and administer a program for testing and ensuring the fitness of persons to operate commercial motor vehicles in accordance with the minimum federal standards contained in 49 CFR 383.

The updated incorporation by reference of the federal motor carrier safety and hazardous materials regulations in 17 A.A.C. Chapter 5, Article 2, allows the Arizona Department of Public Safety (DPS) to be eligible to apply for an estimated \$10 – \$12 million in total federal funding from the Federal Motor Carrier Administration (FMCSA).

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

Not applicable

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

Notice of Rulemaking Docket Opening: 27 A.A.R. 676, April 30, 2021

Notice of Proposed Rulemaking: 27 A.A.R. 646, April 30, 2021

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

Name: Candace Olson, Rules Analyst
Address: Rules and Policy Development
Department of Transportation
206 S. 17th Ave., Mail Drop 180A
Phoenix, AZ 85007
Telephone: (480) 267-6610
E-mail: COlson2@azdot.gov
Web site: <https://azdot.gov/about/government-relations>

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

ADOT, in partnership with DPS, is engaged in rulemaking to incorporate parts of the 2020 edition of the *Code of Federal Regulations* in 17 A.A.C. Chapter 5, Article 2. Both ADOT and DPS rely on federal monies that require the adoption of federal motor carrier safety and hazardous materials regulations. The incorporation of these parts of the *Code of Federal Regulations* impacts ADOT's rules concerning CDL physical qualifications and HMEs. ADOT engages in this rulemaking to ensure its rules are consistent and current with federal regulations, including where a search may be performed to locate a certified medical examiner listed on the National Registry of Certified Medical Examiners and incorporating the 2020 edition of 49 CFR 1572 for the HMEs.

In addition, minor clarifying and technical changes have been made to ensure consistent language, updated office type, and conformity to the rulemaking format and style requirements of the Arizona Administrative Procedure Act and the Office of the Secretary of State.

7. A reference to any study relevant to the rule that the agency reviewed and either relied on or did not 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:

ADOT 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:

ADOT anticipates that the economic impact of these rules is minimal and does not expect this rulemaking to create a significant increase in costs or benefits to the agency or to applicants for a CDL or HME since the rulemaking is generally to update information to be consistent with current federal regulations and current program practices. There are no new fees associated with this rulemaking and costs imposed for the HME have remained the same since the 2018 rulemaking. The fee for the U.S. Transportation Security Administration (TSA) HME Security Threat Assessment is \$86.50.

The benefits of this rulemaking include increased clarity and reduction of confusion for an agency, business, or person. In addition, this rulemaking will keep the state consistent with federal regulations which allows the state to be eligible for federal funds. DPS administers and enforces the Federal Motor Carrier Safety Assistance Program (MCSAP) throughout the State of Arizona. For FY 2021, DPS is able to apply for an estimated \$10,000,000 to \$12,000,000 in total federal funding from FMCSA.

As of January 20, 2021, there are 113,982 CDL holders, 1,548 CDL holders with an HME, and 14,525 CDL holders with dual endorsement of tank and hazardous materials. As of March 25, 2021, there are 21,885 valid CDL holders who have successfully completed the required TSA HME Security Threat Assessment. There are 374 applicants who did not successfully complete the required TSA HME Security Threat Assessment. There has also been one case in which an active HME was immediately revoked as a result of a TSA HME Security Threat Assessment determination.

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

In R17-4-709(2)(c), removed “Authorized Third Party Customer Service” as an office type that can remove an HME after failing the Security Threat Assessment since the inclusion was in error and it is not a current function performed at these offices.

In addition, a minor grammatical and non-substantive technical change for capitalization was made upon

review.

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

ADOT did not receive any public or stakeholder comments regarding this rulemaking.

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

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

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

These rules concern certain requirements for applicants of a CDL or HME. A CDL and HME are general permits since the activities and practices authorized by them are substantially similar in nature for all holders. These rules though do not require the issuance of the CDL or HME; that requirement is under 17 A.A.C. Chapter 5, Article 2.

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 regulations in 49 CFR 383, 390, 391, and 1572 are applicable to the rules. These rules are in accordance with those federal regulations and are not more stringent.

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

No analysis was submitted to ADOT

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

In R17-4-702: 49 CFR 1572, revised as of October 1, 2020

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 17. TRANSPORTATION
CHAPTER 4. DEPARTMENT OF TRANSPORTATION
TITLE, REGISTRATION, AND DRIVER LICENSES

ARTICLE 5. SAFETY

Section

R17-4-508. Commercial Driver License Physical Qualifications

ARTICLE 7. HAZARDOUS MATERIALS ENDORSEMENT

Section

R17-4-701. Definitions

R17-4-702. Scope

R17-4-707. Security Threat Assessment

R17-4-709. Determination of Security Threat

ARTICLE 5. SAFETY

R17-4-508. Commercial Driver License Physical Qualifications

A. Requirements.

1. A commercial driver license applicant shall submit a U.S. Department of Transportation medical examiner's certificate, available online from the Federal Motor Carrier Safety Administration at <https://www.fmcsa.dot.gov>, completed as prescribed under 49 CFR 391.43 to the Department.
 - a. Except as provided in subsection (A)(1)(c), the medical examiner's certificate must be completed by a medical examiner who is listed on the current National Registry of Certified Medical Examiners. A ~~list~~ search of certified medical examiners is available on the ~~National Registry~~ Federal Motor Carrier Safety Administration's website at <https://nationalregistry.fmcsa.dot.gov>.
 - b. The medical examiner's certificate must be completed upon the applicant's initial application and upon or prior to expiration of the applicant's current medical examiner's certificate.
 - c. An optometrist, licensed to practice by the federal government, any state, or U.S. territory, may perform the medical examination as it pertains to visual acuity, field of vision, and the ability to recognize colors as specified in 49 CFR 391.41(b)(10).
2. As prescribed under 49 CFR 391.41(a)(2), a licensee who possesses a commercial driver license shall keep an original or photographic copy of the licensee's current medical examiner's certificate required under subsection (A)(1) available for law enforcement inspection upon request for no more than 15 days after the date it was issued as valid proof of medical certification.
3. A licensee who possesses a commercial driver license shall notify the Department of a physical condition that develops or worsens causing noncompliance with the commercial driver license physical qualifications as soon as the licensee's medical condition allows.

B. Commercial driver license suspension and revocation notification procedure. To notify a licensee of any commercial driver license suspension and revocation under subsection (C), the Department shall simultaneously mail two notices within 15 days after a medical examiner's certificate's due date or actual submission date to the licensee's address of record that:

1. Suspends the licensee's commercial driver license beginning on the notice's date; and
2. Revokes the licensee's commercial driver license 15 days after the date of the suspension notice issued under subsection (B)(1).

C. Noncompliance actions.

1. Initial application denial. If an applicant's initial medical examiner's certificate required under subsection (A)(1) shows that the applicant does not comply with the commercial driver license physical qualifications, the Department shall immediately mail the commercial driver license denial notification to the applicant's address of record.
2. Medical examiner's certificate renewal suspension and revocation. If a renewing commercial driver licensee submits:

- a. No medical examiner's certificate required under subsection (A)(1) or a form indicating noncompliance with commercial driver license physical qualifications, the Department shall follow the suspension and revocation notification procedure prescribed under subsection (B).
 - b. An incomplete medical examiner's certificate required under subsection (A)(1), the Department shall immediately return the incomplete form with a letter requesting that the licensee provide missing information to the Department within 45 days after the date of the Department's letter. The Department shall follow the suspension and revocation notification procedure prescribed under subsection (B) if the licensee fails to return the requested information in the time-frame prescribed in this subsection.
- D.** A commercial driver license that remains revoked for longer than 12 months expires. The holder of an expired commercial driver license may obtain a new commercial driver license by successfully completing all commercial driver license original-application written, vision, and skills testing and by submitting the medical examiner's certificate prescribed under subsection (A)(1).
- E.** Administrative hearing. A person who is denied a commercial driver license or whose commercial driver license is suspended or revoked under this Section may request a hearing from the Department as prescribed under 17 A.A.C. 1, Article 5. The hearing is held in accordance with the procedures prescribed under A.R.S. Title 41, Chapter 6, Article 6 and 17 A.A.C. 1, Article 5.

ARTICLE 7. HAZARDOUS MATERIALS ENDORSEMENT

R17-4-701. Definitions

In addition to the definitions contained in 49 CFR 1572, the following words and phrases apply to this Article:

“Applicant” means an individual who applies to obtain an original or renewal HME.

“CDL” means commercial driver license.

“Department” has the same meaning as defined ~~under~~ in A.R.S. § 28-101.

“HME” means ~~Hazardous Materials Endorsement~~ hazardous materials endorsement.

“Security Threat Assessment” means a check by TSA that includes a fingerprint-based criminal history records check, an intelligence-related background check, and a final disposition.

“Transfer applicant” means an individual with an existing HME issued by another state, applying to the state of Arizona for an HME.

“TSA” means the U.S. Transportation Security Administration.

R17-4-702. Scope

This Article applies to commercial drivers who are applying for an original, renewal, or transfer of an HME, in accordance with 49 CFR 1572. The Department incorporates by reference 49 CFR 1572, revised as of October 1, ~~2016~~ 2020, and no later amendments or editions. The incorporated material is on file with the Department at 206 S. 17th Avenue, Phoenix, AZ 85007. The incorporated material is published by National Archives and Records Administration, Office of the Federal Register, 8601 Adelphi Road, College Park, MD 20740-6001, and is printed and distributed by the U.S. Government Publishing Office, P.O. Box 979050, St. Louis, MO 63197-9000. The incorporated material can be viewed online at ~~http://www.efr.gov~~ or ~~https://www.gpo.gov/fdsys~~ https://www.govinfo.gov and ordered online by visiting the U.S. Government ~~Online~~ Bookstore at http://bookstore.gpo.gov. The International Standard Book Number is ~~9780160935534~~ 9780160958861.

R17-4-708. Security Threat Assessment

- A. An applicant for an HME shall successfully pass a Security Threat Assessment every five years.
- B. An applicant subject to any of the following actions, as defined ~~under~~ in A.R.S. § 28-3001, shall obtain a new Security Threat Assessment and HME:
 1. Cancellation,
 2. Suspension for a period of one year or more,
 3. Expiration for a period of one year or more, and
 4. Revocation for a period of one year or more.

R17-4-709. Determination of Security Threat

Upon notification by TSA that an applicant has failed to successfully pass the Security Threat Assessment:

1. For an original applicant:
 - a. The Department will deny the request for an HME; and
 - b. If otherwise qualified, the applicant may apply for a CDL without an HME.
2. For a renewal applicant:
 - a. The Department shall immediately cancel the HME.
 - b. The Department will notify an HME applicant with a Notice of Action that the applicant has 15 days from the notice date to have the HME removed.
 - c. The applicant shall visit a ~~CDL~~ Motor Vehicle Division Customer Service office for removal of the HME.
 - d. If the applicant fails to comply with the Department's Notice of Action, the Department shall cancel the applicant's Arizona driver license privilege.
 - e. Upon removal of an HME by the Department under this Section, an applicant, if otherwise qualified, may continue to hold a CDL.

ECONOMIC, SMALL BUSINESS AND CONSUMER IMPACT STATEMENT

TITLE 17. TRANSPORTATION

CHAPTER 4. DEPARTMENT OF TRANSPORTATION

TITLE, REGISTRATION, AND DRIVER LICENSES

R17-4-508, R17-4-701, R17-4-702, R17-4-708, and R17-4-709

A. Economic, small business and consumer impact summary:

1. Identification of the proposed rulemaking:

The Arizona Department of Transportation (ADOT), in partnership with the Arizona Department of Public Safety (DPS), is engaged in rulemaking to incorporate parts of the 2020 edition of the *Code of Federal Regulations* in 17 A.A.C. Chapter 5, Article 2. Both ADOT and DPS rely on federal monies that require the adoption of federal motor carrier safety and hazardous materials regulations. The incorporation of these parts of the *Code of Federal Regulations* impacts ADOT's rules concerning commercial driver license (CDL) physical qualifications and hazardous materials endorsements (HMEs). ADOT engages in this rulemaking to ensure its rules are consistent and current with federal regulations, including where a search may be performed to locate a certified medical examiner listed on the National Registry of Certified Medical Examiners and incorporating the 2020 edition of 49 CFR 1572 for the HMEs.

In addition, minor clarifying and technical changes have been made to ensure consistent language, updated office type, and conformity to the rulemaking format and style requirements of the Arizona Administrative Procedure Act and the Office of the Secretary of State.

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

These rules are made in connection with the required incorporation by reference of the federal motor carrier safety and hazardous materials regulations in 17 A.A.C. Chapter 5, Article 2, thus ensuring there is a consistency between ADOT's regulations, state statutes, and the federal regulations. These changes allow for a greater understanding by CDL applicants of what is required of them as it pertains to their physical qualifications and, when applicable, eligibility for an HME. These regulations safeguard the public by making sure there are healthy and safe CDL holders. In addition, the updated incorporation by reference of the federal motor carrier safety and hazardous materials regulations in 17 A.A.C. Chapter 5, Article 2, allows DPS to be eligible to apply for an estimated \$10 - 12 million in total federal funding from the Federal Motor Carrier Safety Administration (FMCSA).

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:

ADOT is statutorily required to administer the driver licensing and medical evaluation activities required of commercial motor vehicle drivers under A.R.S. Title 28, Chapter 8, and these rules. ADOT is required under A.R.S. § 28-5204(A)(2) to consider, as evidence of generally accepted safety standards, the publications of the United States Department of Transportation and the Environmental

Protection Agency when adopting rules necessary to administer and enforce A.R.S. Title 28, Chapter 14. 49 CFR 384 requires that each state comply with the provisions of section 12009(a) of the Commercial Motor Vehicle Safety Act of 1986 (49 U.S.C. 31311(a)), and adopt and administer a program for testing and ensuring the fitness of persons to operate commercial motor vehicles in accordance with the minimum federal standards contained in 49 CFR 383. If these rule amendments are not adopted, the Department would not be in compliance with federal and state law, which could expose the agency to a loss of funds; inconsistencies between state regulations; and FMCSA could prohibit ADOT's CDL Program from issuing, renewing, transferring, or upgrading CDLs in this state if they determine that Arizona is not substantially in compliance with 49 U.S.C. 31311(a).

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

This rulemaking would reduce regulatory burdens; inconsistencies; ensure the state to be in compliance with federal and state requirements and continue to be eligible for federal funding, which total approximately \$10 - \$12 million annually; allow ADOT's CDL Program to continue issuing, renewing, transferring, or upgrading CDLs in Arizona; and allow ADOT to ensure the most current and generally accepted federal standards used by industry and law enforcement personnel to promote safe operation of both interstate and intrastate commercial motor vehicles, including the physical fitness of the drivers and security threat assessment, are being implemented and in keeping with state statutes.

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

ADOT anticipates that the economic impact of these rules is minimal and does not expect this rulemaking to create a significant increase in costs or benefits to the agency or to applicants for a CDL or HME since the rulemaking is generally to update information to be consistent with current federal regulations and current program practices. There are no new fees associated with this rulemaking and costs imposed for the HME have remained the same since the 2018 rulemaking. The fee for the U.S. Transportation Security Administration (TSA) HME Security Threat Assessment is \$86.50.

The benefits of this rulemaking include increased clarity and reduction of confusion for an agency, business, or person. In addition, this rulemaking will keep the state consistent with federal regulations which allows the state to be eligible for federal funds. DPS administers and enforces the Federal Motor Carrier Safety Assistance Program (MCSAP) throughout the State of Arizona. For FY 2021, DPS is able to apply for an estimated \$10,000,000 - \$12,000,000 in total federal funding from FMCSA.

As of January 20, 201, there are 113,982 CDL holders, 1,548 CDL holders with an HME, and 14,525 CDL holders with dual endorsement of tank and hazardous materials. As of March 25, 2021, there are 21,885 valid CDL holders who have successfully completed the required TSA HME Security Threat Assessment. There are 374 applicants who did not successfully complete the required TSA HME Security Threat

Assessment. There has also been one case in which an active HME was immediately revoked as a result of a TSA HME Security Threat Assessment determination.

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

Name: Candace Olson
 Address: Rules and Policy Development Office
 Department of Transportation
 206 S. 17th Ave., Mail Drop 180A
 Phoenix, AZ 85007
 Telephone: (480) 267-6610
 E-mail: COlson2@azdot.gov

B. 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:

Persons to bear costs	Persons directly benefiting
ADOT	ADOT
CDL applicants and holders	CDL applicants and holders
Employers who opt to pay for the CDL medical examinations or HME Security Threat Assessments	Certified medical examiners listed on the National Registry
Hazardous materials industries	General motoring public
State CDL programs	TSA

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

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

Minimal less than \$1,000
 Moderate \$1,000 to \$9,999
 Substantial \$10,000 or more

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

ADOT does not expect this rulemaking to create a significant increase or decrease in costs or benefits to the agency since the rulemaking is generally intended to update the terminology and practices to be consistent with the federal motor carrier safety and hazardous materials regulations incorporated by reference in 17 A.A.C. Chapter 5, Article 2, and to update the incorporation by reference of 49 CFR

1572 in 17 A.A.C. Chapter 4, Article 7, and make conforming changes. The anticipated economic impact to ADOT is moderate and includes the resources necessary for rulemaking and the costs associated with implementation of the rules. ADOT should benefit by having to spend less resources on providing individual clarification of the rules to regulated persons. Annually, ADOT incurs substantial costs to review, monitor, and maintain CDL medical evaluation forms. However, the CDL medical screening process fulfills ADOT's statutory obligations and protects the public.

There are no additional administrative costs to ADOT associated with this rulemaking since ADOT already has a CDL medical review and HME process in place.

This rulemaking will keep the state consistent with federal regulations which allows the state to be eligible for federal funds. DPS administers and enforces MCSAP throughout the State of Arizona. For FY 2021, DPS is able to apply for an estimated \$10,000,000 – \$12,000,000 in total federal funding from FMCSA.

ADOT is not required to notify the Joint Legislative Budget Committee) under A.R.S. § 41-1055(B)(3)(a), since no new full time employees are necessary to enforce and implement these rules.

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

ADOT anticipates that political subdivisions of this State may incur minimal to substantial costs only when the agency either pays for or provides the medical evaluations required under 49 USC 391.43 to their employees who hold a CDL or pays for their employee's TSA HME Security Threat Assessment. The actual cost is difficult to quantify as the amount is dependent upon cost for the medical evaluation and the number of agency employees subject to these requirements. The fee for the TSA HME Security Threat Assessment is set at \$86.50. These costs are not new requirements and the agencies may already have a budget in place for them.

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:

This rulemaking is updating ADOT's rules to current practices. There are no new fees or costs associated with this rulemaking. CDL applicants, permittees, and licensees are currently paying the costs for the required medical evaluations and for the TSA HME Security Threat Assessment. The \$86.50 TSA HME Security Threat Assessment has remained the same since the last rulemaking completed in 2018.

The benefits of this rulemaking include increased public safety; clarity; conciseness; understandability; reduction of possibility of confusion for an agency, business, or person; and a reduction of a regulatory burden from some of the streamlining, technical changes.

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:

ADOT anticipates a minimal impact on private and public employment as a result of this rulemaking. Employers may benefit from being able to hire from a slightly larger pool of CDL holders. CDL applicants and holders may benefit from a streamlined and clearer understanding of their requirements.

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

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

The small businesses subject to these rules, as defined under A.R.S. § 41-1001(20), are independent motor carriers, CDL applicants and holders already subject to the federal motor carrier safety and hazardous materials regulations, and the medical examiners listed on the National Registry of Certified Medical Examiners.

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

General administrative costs for small businesses are the same as discussed under paragraph (B)(3)(c) above. Overall, ADOT anticipates no new economic impact to qualified persons and business entities as a result of this rulemaking.

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

The costs associated with this rulemaking are uniform regardless of business size. ADOT has expanded the availability of offices that may perform CDL transactions which may allow small businesses to spend less if they assist their drivers in obtaining and maintaining their CDLs since the CDL holders may have fewer expenses involved with the expanded capability of going to an office much closer to their location.

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

The rules support the public interest and the interests of concerned parties by ensuring that all federal motor carrier safety and hazardous materials regulations and requirements of motor carriers are uniformly applied and enforced. The public benefits when all motor carriers remain in compliance with these rules include increased public safety, clarity, concise, understandability, and reduction of possibility of confusion for a business or person. ADOT has expanded the availability of offices that may perform CDL transactions which may allow CDL holders to have fewer expenses involved with the expanded capability of going to an office much closer to their location.

6. Statement of the probable effect on state revenues:

Since this rulemaking is in association with the required incorporation by reference update of the *Code of Federal Regulations* in 17 A.A.C. Chapter 5, Article 2, DPS will be eligible to apply for an estimated \$10 million - \$12 million in MCSAP funding that may be used for commercial motor vehicle safety programs such as:

- Motor carrier safety programs in accordance with 49 CFR 350.203;
- Size and weight enforcement programs in accordance with 49 CFR 350.227(b)(1);
- Criminal activity enforcement programs in accordance with 49 CFR 350.227(b)(2);and

- Traffic safety programs in accordance with 49 CFR 350.227(c).

This rulemaking ensures that an amount of up to 5 percent of the state's federal-aid highway funds apportioned under each of sections 104(b)(1), (b)(3), and (b)(4) of 23 U.S.C. will not be withheld for noncompliance. Based on amounts traditionally received by ADOT, this amount could reach approximately \$30 million depending on the actual appropriation.

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

In rulemaking, ADOT routinely adopts the least costly and least burdensome options for any process or procedure required of the regulated public or industry. However, each state is required under 49 CFR 384.301 to adopt and carry out a program for testing and ensuring the fitness of individuals to operate commercial motor vehicles consistent with the minimum standards prescribed by the Secretary of Transportation under 49 U.S.C. 31305(a) as soon as practical, or an amount of up to 5 percent of the state's federal-aid highway funds apportioned under each of sections 104(b)(1), (b)(3), and (b)(4) of 23 U.S.C. may be withheld from the state for noncompliance. Based on amounts traditionally received by the Department, this amount could reach approximately \$30 million depending on the actual appropriation. Therefore, to the extent permitted by federal law, ADOT has determined that these rules impose the least burden and costs to regulated persons.

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

None

CHAPTER 4. DEPARTMENT OF TRANSPORTATION - TITLE, REGISTRATION, AND DRIVER LICENSES

3479, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 9 A.A.R. 641, effective April 8, 2003 (Supp. 03-1).

R17-4-462. Repealed**Historical Note**

New Section recodified from R17-4-423 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 9 A.A.R. 641, effective April 8, 2003 (Supp. 03-1).

R17-4-463. Repealed**Historical Note**

New Section recodified from R17-4-424 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 9 A.A.R. 641, effective April 8, 2003 (Supp. 03-1).

R17-4-464. Repealed**Historical Note**

New Section recodified from R17-4-425 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 9 A.A.R. 641, effective April 8, 2003 (Supp. 03-1).

R17-4-465. Repealed**Historical Note**

New Section recodified from R17-4-426 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 9 A.A.R. 641, effective April 8, 2003 (Supp. 03-1).

R17-4-466. Repealed**Historical Note**

New Section recodified from R17-4-427 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 9 A.A.R. 641, effective April 8, 2003 (Supp. 03-1).

R17-4-467. Repealed**Historical Note**

New Section recodified from R17-4-428 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Section repealed by final rulemaking at 9 A.A.R. 641, effective April 8, 2003 (Supp. 03-1).

ARTICLE 5. SAFETY**R17-4-501. Definitions**

In addition to the definitions provided under A.R.S. §§ 28-101, 28-3001, and 28-3005, in this Article, unless otherwise specified:

“Adaptation” means a modification of or addition to the standard operating controls or equipment of a motor vehicle.

“Applicant” means a person:

Applying for an Arizona driver license or driver license renewal, or

Required by the Department to complete an examination successfully or to obtain an evaluation.

“Application” means the Department form required to be completed by or for an applicant for a driver license or driver license renewal.

“Aura” means a sensation experienced before the onset of a neurological disorder.

“Commercial driver license physical qualifications” means driver medical qualification standards for a person licensed in class A, B, or C to operate a commercial vehicle as prescribed under 49 CFR 391, incorporated by reference under A.A.C. R17-5-202 and R17-5-204.

“Disqualifying medical condition” means a visual, physical, or psychological condition, including substance abuse, that impairs functional ability.

“Evaluation” means a medical assessment of an applicant or licensee by a specialist to determine whether a disqualifying medical condition exists.

“Examination” means testing or evaluating an applicant’s or licensee’s:

Ability to read and understand official traffic control devices,

Knowledge of safe driving practices and the traffic laws of this state, and

Functional ability.

“Functional ability” means the ability to operate safely a motor vehicle of the type permitted by an Arizona driver license class or endorsement.

“Licensee” means a person issued a driver license by this state.

“Licensing action” means an action by the Department to:

Issue, deny, suspend, revoke, cancel, or restrict a driver license or driving privileges; or

Require an examination or evaluation of an applicant or licensee.

“Medical alert code” means a system of numerals or letters indicating the licensee suffers from some type of adverse medical condition.

“Medical screening questions and certification” means the questions and certification on the application.

“Neurological disorder” means a malfunction or disease of the nervous system.

“Seizure” means a neurological disorder characterized by a sudden alteration in consciousness, sensation, motor control, or behavior, due to an abnormal electrical discharge in the brain.

“Specialist” means:

A physician who is a surgeon or a psychiatrist,

A physician whose practice is limited to a particular anatomical or physiological area or function of the human body or to patients with a specific age range, or

A psychologist.

“Substance abuse” means:

Use of alcohol in a manner that makes the user an alcoholic as defined in A.R.S. § 36-2021, or

Use of a controlled substance in a manner that makes the user a drug dependent person as defined in A.R.S. § 36-2501.

“Substance abuse evaluation” means an assessment by a physician, specialist, or certified substance abuse counselor to determine whether the use of alcohol or a drug impairs functional ability.

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“Successful completion of an examination” means an applicant or licensee:

Establishes the visual, physical, and psychological ability to operate a motor vehicle safely, or

Achieves a score of at least 80% on any required tests.

Historical Note

Adopted effective December 14, 1995 (Supp. 95-4). Section recodified to R17-5-706 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). New Section made by final rulemaking at 8 A.A.R. 3241, effective July 12, 2002 (Supp. 02-3). Amended by final rulemaking at 8 A.A.R. 5223, effective December 5, 2002 (Supp. 02-4). Amended by final rulemaking at 10 A.A.R. 2829, effective August 7, 2004 (Supp. 04-2). Amended by final rulemaking at 13 A.A.R. 1127, effective May 5, 2007 (Supp. 07-1). Amended by final rulemaking at 14 A.A.R. 227, effective March 8, 2008 (Supp. 08-1). Amended by final rulemaking at 24 A.A.R. 1543, effective May 1, 2018 (Supp. 18-2). Amended by final expedited rulemaking at 26 A.A.R. 3147, with an immediate effective date of December 3, 2020 (Supp. 20-4).

R17-4-502. General Provisions for Visual, Physical, and Psychological Ability to Operate a Motor Vehicle Safely**A. Screening process for safe operation of a motor vehicle.**

1. An applicant shall complete the application, including the medical screening questions and certification.
2. An applicant without a valid driver license shall successfully complete all required examinations or obtain an evaluation if:
 - a. The Department informs the applicant that the applicant’s responses to the medical screening questions indicate the existence of a disqualifying medical condition; or
 - b. The applicant comes under subsection (B)(1)(a), (B)(1)(c), or (B)(1)(d).
3. An applicant for license renewal shall successfully complete an examination or obtain an evaluation if the applicant’s responses to the medical screening questions indicate that since the applicant’s last driver license issuance:
 - a. The applicant has developed a visual, physical, or psychological condition that may constitute a disqualifying medical condition; or
 - b. There has been a change in an existing visual, physical, or psychological condition that may constitute a disqualifying medical condition.
4. As soon as a licensee’s medical condition allows, the licensee shall notify the Department, in writing, that a medical condition exists not previously reported to the Department that may affect the licensee’s functional ability. On receipt of the required notification, the Department shall require the licensee to complete an examination or evaluation.

B. Evaluation. An applicant or licensee shall submit to an evaluation as required by the Department.

1. The Department shall require an evaluation if the Department notifies the applicant or licensee in writing that:
 - a. The applicant or licensee comes under the provisions of R17-4-503 or R17-4-506;
 - b. The applicant or licensee reports a possible disqualifying medical condition or fails to successfully complete an examination;

- c. The applicant or licensee shows unexplained confusion, loss of consciousness, or incoherence that is observed by Department personnel; or
 - d. A person with direct knowledge submits to the Department written information about specific events or conduct indicating the applicant or licensee may have a disqualifying medical condition.
2. The applicant or licensee shall have the physician, appropriate specialist, or certified substance abuse counselor who performs an evaluation submit timely an evaluation report on a form provided by the Department to the Department’s Medical Review Program.
 3. An applicant or licensee shall pay for any expense incurred by the applicant or licensee to show compliance with the visual, physical, and psychological standards for a driver license.
- C. Licensing action.** The Department shall take a licensing action after requiring an applicant or licensee to complete an examination successfully or obtain an evaluation and submit an evaluation report.
1. The Department shall deny a driver license if an applicant or licensee:
 - a. Fails to complete successfully an examination; or
 - b. Fails to:
 - i. Obtain an evaluation; or
 - ii. Have a physician, appropriate specialist, or certified substance abuse counselor submit an evaluation report to the Department within 30 days after the Department notifies the applicant that an evaluation is required; or
 - c. Has an evaluation report submitted that indicates a disqualifying medical condition.
 2. The Department shall summarily suspend an applicant’s or licensee’s driving privileges under A.R.S. §§ 28-3306 and 41-1064 for a reason stated in subsection (C)(1).
 3. The Department shall issue a revocation notice with a notice of summary suspension. The revocation notice shall inform the applicant or licensee that:
 - a. Unless the Department receives the applicant or licensee’s timely hearing request under subsection (E), the revocation becomes effective:
 - i. Fifteen days after the date the applicant or licensee is personally served with the notice, or
 - ii. Twenty days after the date the notice is mailed to the applicant or licensee.
 - b. An applicant or licensee who wishes to obtain a license after suspension or revocation shall reapply for a license as specified in A.R.S. § 28-3315.
 4. The Department shall issue a driver license or shall not suspend or revoke an applicant or licensee’s driving privileges if:
 - a. The applicant or licensee successfully completes all required examinations and the Department does not require an evaluation, or
 - b. The applicant or licensee obtains all required evaluations and the most recent evaluation report submitted on behalf of the applicant or licensee conclusively indicates no disqualifying medical condition.
- D. Driver license restrictions.** If an applicant or licensee uses an adaptation, including those listed below, to demonstrate functional ability during an examination, the Department shall indicate the adaptation as a restriction on a driver license issued to the applicant or licensee and on the applicant’s or licensee’s driving record:

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1. Automatic transmission,
 2. Hand dimmer switch,
 3. Left-foot gas pedal,
 4. Parking-brake extension,
 5. Power steering,
 6. Power brakes,
 7. Six-way power seat,
 8. Right-side directional signal,
 9. A device that enables an operator to spin the steering wheel,
 10. A device that enables full foot control,
 11. Dual outside mirrors,
 12. Chest restraints,
 13. Shoulder restraints,
 14. A device that extends pedals,
 15. A device that enables full hand control,
 16. Adapted seat, and
 17. Prosthetic aid.
- E. Hearings. The Department's Executive Hearing Office shall conduct the hearing as provided under A.R.S. Title 41, Chapter 6, Article 6, and 17 A.A.C. 1, Article 5.
- F. The Department shall not release information required to be submitted to the Department under this Section by an applicant or licensee except to a person or entity qualified under A.R.S. § 28-455.

Historical Note

New Section recodified from R17-4-520 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 8 A.A.R. 3241, effective July 12, 2002 (Supp. 02-3). Amended by final rulemaking at 9 A.A.R. 1861, effective June 3, 2003 (Supp. 03-2). Amended by final rulemaking at 13 A.A.R. 1127, effective May 5, 2007 (Supp. 07-1). Amended by final expedited rulemaking at 26 A.A.R. 3147, with an immediate effective date of December 3, 2020 (Supp. 20-4).

Exhibit A. Repealed**Historical Note**

New Exhibit made by final rulemaking at 8 A.A.R. 3241, effective July 12, 2002 (Supp. 02-3). Section repealed by final rulemaking at 13 A.A.R. 1127, effective May 5, 2007 (Supp. 07-1).

R17-4-503. Vision Standards**A. Definitions.**

1. "Binocular vision" means the ability to see in both eyes.
 2. "Bioptic telescopic lens system" means a bioptic, spectacle-mounted corrective lens prescribed by a physician or optometrist for meeting vision acuity requirements for driving that uses magnification as the main method of obtaining minimal visual acuity.
 3. "Corrected visual acuity" means distance vision corrected by eyeglasses, contact lenses, or a bioptic telescopic lens system.
 4. "Corrective lens" means eyeglasses, contact lenses, or a bioptic telescopic lens system used to correct distance vision.
 5. "Diplopia" means double vision.
 6. "Impaired night vision" means below normal ability to see in reduced light.
 7. "Monocular vision" means the ability to see in one eye only.
 8. "Optometrist" means a person licensed to practice optometry in any state, territory, or possession of the United States or the Commonwealth of Puerto Rico.
 9. "Retinitis pigmentosa" means a chronic progressive inflammation of the retina with atrophy and pigmentary infiltration of the inner layers of the retina.
 10. "Snellen Chart" means a chart imprinted with lines of black letters of decreasing size for testing visual acuity.
 11. "Visual acuity" means the clarity of a person's vision.
 12. "Visual field" means the area in which objects may be seen when the eye is fixed.
- B. Standard.** The following applies only to class D, G, or M applicants or licensees.
1. Visual acuity. A person shall have binocular or monocular vision and visual acuity of 20/40 in at least one eye.
 - a. The Department shall not license a person with monocular vision and visual acuity of 20/50 or greater.
 - b. The Department shall not license a person with binocular vision and visual acuity of 20/70 or greater.
 2. Visual field. Visual field shall be 70 degrees or greater temporally, and 35 degrees or greater nasally, in at least one eye.
- C. Restrictions.**
1. A person with corrected vision shall wear corrective lenses at all times when driving if the corrective lens is required to achieve the vision standards in subsection (B).
 2. The Department shall restrict a person with diagnosed impaired night vision to daytime driving only.
 3. The Department shall restrict a person with binocular vision and corrected or uncorrected visual acuity of 20/50 or 20/60, when using both eyes, to daytime driving only.
- D. Screening process.**
1. The Department, a physician, or an optometrist may administer visual acuity and visual field screening through the use of visual screening equipment or the Snellen Chart to determine if a person's visual acuity meets minimum standards and through the use of visual screening equipment to determine if a person's visual field meets minimum standards.
 2. A person may use a bioptic telescopic lens system during vision screening.
 - a. Beginning on the date of an initial application and every year thereafter, a person using a bioptic telescopic lens system shall submit to the Department an annual exam performed by a physician or optometrist to ascertain whether the person has a progressive eye disease.
 - b. The Department shall not license a person using a bioptic telescopic lens system unless the person submits to the Department a vision examination form provided by the Department and completed by a physician or an optometrist indicating that the individual meets the visual acuity standard as prescribed in subsection (B).
 - c. The Department shall not license a person using a bioptic telescopic lens system with magnification of the lens that is more than 4X.
- E. Reporting requirements.**
1. A person choosing to have initial visual acuity and visual field screening done by a physician or an optometrist shall submit the results to the Department.
 2. If the Department does initial visual acuity and visual field screening and the person does not meet vision standards of subsection (B), the Department shall require the person to submit the results of the person's visual acuity and visual field screening by a physician or an optometrist.
 3. The Department shall require a person diagnosed with any of the following conditions to file the results of the

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person's visual acuity and visual field screening completed by the physician or optometrist:

- a. Any progressive eye disease,
 - b. Diplopia, or
 - c. Impaired night vision.
- F.** Results of visual acuity and visual field screening from a physician or optometrist shall contain the following.
1. An examination date no more than three months before the submission date to the Department;
 2. Visual acuity and visual field;
 3. If applicable, specification that the person is monocular;
 4. If applicable, diagnosis of any condition described in subsection (E)(3);
 5. Any recommendations on frequency of reporting requirements for the person, in addition to those required by the Department;
 6. Suggested restrictions on driving, in addition to those required by the Department; and
 7. Any recommendations on the person's ability to safely operate a motor vehicle.
- G.** The Department shall require a driving test if a person's eye disease is determined by a physician or optometrist to be progressive.

Historical Note

New Section recodified from R17-4-521 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 12 A.A.R. 221, effective January 10, 2006 (Supp. 06-1). Amended by final expedited rulemaking at 26 A.A.R. 3147, with an immediate effective date of December 3, 2020 (Supp. 20-4).

R17-4-504. Medical Alert Conditions

- A.** Definition. In this Section, "license" means any class of driver license, commercial driver license, non-operating identification license, or instruction permit.
- B.** Medical alert condition displayed on license. The Department will provide on each license a space to indicate a medical alert condition. A list of recognized medical alert conditions is available at all Motor Vehicle Division Customer Service offices and Authorized Third Party Driver License offices.
- C.** Retention of medical alert condition authorization. The Department will not maintain the medical alert code on the Department computer record unless written authorization is submitted.
- D.** A person shall submit a signed statement, from a physician or registered nurse practitioner, stating that the person is diagnosed with a medical condition. The signed statement is required every time the person requests a license unless the person authorizes the Department to maintain the medical alert code on the Department computer record.

Historical Note

Adopted effective September 25, 1991 (Supp. 91-3). Section repealed by final rulemaking at 7 A.A.R. 3831, effective August 10, 2001 (Supp. 01-3). New Section made by final rulemaking at 13 A.A.R. 1127, effective May 5, 2007 (Supp. 07-1). Amended by final rulemaking at 14 A.A.R. 227, effective March 8, 2008 (Supp. 08-1). Amended by final expedited rulemaking at 26 A.A.R. 3147, with an immediate effective date of December 3, 2020 (Supp. 20-4).

R17-4-505. Repealed**Historical Note**

Adopted effective May 2, 1990 (Supp. 90-2). Section repealed by final rulemaking at 7 A.A.R. 3831, effective

August 10, 2001 (Supp. 01-3).

R17-4-506. Neurological Standards

- A.** Driver license application.
1. A person who has a seizure in the three months before applying for a driver license shall undergo an evaluation as provided in R17-4-502.
 2. After the evaluation under R17-4-502, the person or the person's physician shall submit the medical examination report to the Department.
 3. The Department shall not issue a driver license to a person if the medical examination report shows that the person has a neurological disorder that affects the person's ability to operate a motor vehicle safely.
- B.** Driver license revocation.
1. A person with a driver license or nonresident driving privileges who experiences a seizure shall cease driving and:
 - a. Undergo an evaluation as provided in R17-4-502;
 - b. Submit the medical examination report to the Department; and
 - c. Undergo a follow-up evaluation within one year after the seizure or within a shorter time, as recommended by a physician.
 2. After each evaluation, the person or the person's physician shall submit the applicable medical examination report to the Department.
 3. The Department shall revoke a person's driver license or nonresident driving privileges if any medical examination report shows the person has a neurological disorder that affects the person's ability to operate a motor vehicle safely.
- C.** Medical examination report. A medical examination report under this Section shall include the following information:
1. Age at onset of seizures, diagnosis, and history;
 2. Aftereffects of seizures;
 3. EEG findings, if any;
 4. Description, cause, frequency, duration, and date of most recent seizure;
 5. Current medications, including dosage, side effects, and serum level; and
 6. A physician's medical opinion as to whether the neurological disorder will affect the person's ability to operate a motor vehicle safely.
- D.** Physician's medical opinion. A neurological disorder does not affect a person's ability to operate a motor vehicle safely if a physician concludes with reasonable medical certainty that:
1. Any seizure that occurred within the last three months was due to a change in anticonvulsant medication ordered by a physician and that seizures are under control after the change in medication;
 2. Any seizure that occurred within the last three months was a single event that will not recur in the future;
 3. Any seizure is likely to occur but has an established pattern of occurring only during sleep; or
 4. There is an established pattern of an aura of sufficient duration to allow the person to cease operating a motor vehicle immediately at the onset of the aura.

Historical Note

Former Rule, General Order 107; Amended effective April 28, 1981 (Supp. 81-2). Amended effective July 1, 1985 (Supp. 85-4). Former Section R17-4-46 renumbered without change as Section R17-4-506 (Supp. 87-2). Emergency amendment adopted effective December 31, 1998, pursuant to A.R.S. § 28-366, for a maximum of 180 days (Supp. 98-4). Emergency amendment expired June

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29, 1999 pursuant to A.R.S. § 41-1026(C) (Supp. 99-3). Emergency amendment adopted effective October 1, 1999, pursuant to A.R.S. § 28-366, for a maximum of 180 days (Supp. 99-4). Amended by final rulemaking at 6 A.A.R. 1172, effective March 9, 2000 (Supp. 00-1). Amended by final rulemaking at 7 A.A.R. 3221, effective July 12, 2001 (Supp. 01-3). Section recodified to R17-4-404 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). New Section recodified from R17-4-522 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Amended by final rulemaking at 7 A.A.R. 5440, effective November 14, 2001 (Supp. 01-4). Amended by final rulemaking at 8 A.A.R. 5223, effective December 5, 2002 (Supp. 02-4). Amended by final expedited rulemaking at 26 A.A.R. 3147, with an immediate effective date of December 3, 2020 (Supp. 20-4).

R17-4-507. Repealed**Historical Note**

Adopted effective July 24, 1985 (Supp. 85-4). Amended effective March 13, 1986 (Supp. 86-2). Former Section R17-4-50 renumbered without change as Section R17-4-507 (Supp. 87-2). Amended by final rulemaking at 7 A.A.R. 4355, effective September 14, 2001 (Supp. 01-3). Amended by final rulemaking at 8 A.A.R. 5223, effective December 5, 2002 (Supp. 02-4). Section repealed by final rulemaking at 24 A.A.R. 1543, effective May 1, 2018 (Supp. 18-2).

R17-4-508. Commercial Driver License Physical Qualifications**A. Requirements.**

1. A commercial driver license applicant shall submit a U.S. Department of Transportation medical examiner's certificate, available online from the Federal Motor Carrier Safety Administration at <https://www.fmcsa.dot.gov>, completed as prescribed under 49 CFR 391.43 to the Department.
 - a. Except as provided in subsection (A)(1)(c), the medical examiner's certificate must be completed by a medical examiner who is listed on the current National Registry of Certified Medical Examiners. A list of certified medical examiners is available on the National Registry website at <https://nationalregistry.fmcsa.dot.gov>.
 - b. The medical examiner's certificate must be completed upon the applicant's initial application and upon or prior to expiration of the applicant's current medical examiner's certificate.
 - c. An optometrist, licensed to practice by the federal government, any state, or U.S. territory, may perform the medical examination as it pertains to visual acuity, field of vision, and the ability to recognize colors as specified in 49 CFR 391.41(b)(10).
2. As prescribed under 49 CFR 391.41(a)(2), a licensee who possesses a commercial driver license shall keep an original or photographic copy of the licensee's current medical examiner's certificate required under subsection (A)(1) available for law enforcement inspection upon request for no more than 15 days after the date it was issued as valid proof of medical certification.
3. A licensee who possesses a commercial driver license shall notify the Department of a physical condition that develops or worsens causing noncompliance with the commercial driver license physical qualifications as soon as the licensee's medical condition allows.

- B. Commercial driver license suspension and revocation notification procedure. To notify a licensee of any commercial driver license suspension and revocation under subsection (C), the Department shall simultaneously mail two notices within 15 days after a medical examiner's certificate's due date or actual submission date to the licensee's address of record that:
 1. Suspends the licensee's commercial driver license beginning on the notice's date; and
 2. Revokes the licensee's commercial driver license 15 days after the date of the suspension notice issued under subsection (B)(1).
- C. Noncompliance actions.
 1. Initial application denial. If an applicant's initial medical examiner's certificate required under subsection (A)(1) shows that the applicant does not comply with the commercial driver license physical qualifications, the Department shall immediately mail the commercial driver license denial notification to the applicant's address of record.
 2. Medical examiner's certificate renewal suspension and revocation. If a renewing commercial driver licensee submits:
 - a. No medical examiner's certificate required under subsection (A)(1) or a form indicating noncompliance with commercial driver license physical qualifications, the Department shall follow the suspension and revocation notification procedure prescribed under subsection (B).
 - b. An incomplete medical examiner's certificate required under subsection (A)(1), the Department shall immediately return the incomplete form with a letter requesting that the licensee provide missing information to the Department within 45 days after the date of the Department's letter. The Department shall follow the suspension and revocation notification procedure prescribed under subsection (B) if the licensee fails to return the requested information in the time-frame prescribed in this subsection.
- D. A commercial driver license that remains revoked for longer than 12 months expires. The holder of an expired commercial driver license may obtain a new commercial driver license by successfully completing all commercial driver license original-application written, vision, and skills testing and by submitting the medical examiner's certificate prescribed under subsection (A)(1).
- E. Administrative hearing. A person who is denied a commercial driver license or whose commercial driver license is suspended or revoked under this Section may request a hearing from the Department as prescribed under 17 A.A.C. 1, Article 5. The hearing is held in accordance with the procedures prescribed under A.R.S. Title 41, Chapter 6, Article 6 and 17 A.A.C. 1, Article 5.

Historical Note

Adopted effective October 31, 1975 (Supp. 75-1). Former Section R17-4-57 renumbered without change as Section R17-4-508 (Supp. 87-2). Emergency amendments adopted effective July 30, 1993, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 93-3). Emergency amendments permanently adopted effective October 27, 1993 (Supp. 93-4). Section recodified to R17-4-409 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). New Section recodified from R17-4-802 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-1). Amended by final rulemaking at 10 A.A.R. 2829, effective August 7, 2004 (Supp. 04-2). Amended by final rulemaking at 13 A.A.R. 1127, effective May 5, 2007 (Supp. 07-1). Amended by

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final rulemaking at 14 A.A.R. 395, effective March 8, 2008 (Supp. 08-1). Amended by final rulemaking at 24 A.A.R. 1543, effective May 1, 2018 (Supp. 18-2).

R17-4-509. Repealed**Historical Note**

Adopted effective February 14, 1984 (Supp. 84-1). Former Section R17-4-56 renumbered without change as Section R17-4-509 (Supp. 87-2). Repealed effective December 17, 1993 (Supp. 93-4).

R17-4-510. Motorcycle Noise Level Limits

The Department incorporates by reference 40 CFR 205.152 and 205.166, revised as of July 1, 2019, and no later amendments or editions. The incorporated material is on file with the Department at 206 S. 17th Avenue, Phoenix, AZ 85007. The incorporated material is published by National Archives and Records Administration, Office of the Federal Register, 8601 Adelphi Road, College Park, MD 20740-6001, and printed and distributed by the U.S. Government Publishing Office, P.O. Box 979050, St. Louis, MO 63197-9000. The incorporated material can be viewed online at <http://www.ofr.gov> or <https://www.govinfo.gov/app/collection/cfr> and ordered online by visiting the U.S. Government Online Bookstore at <http://bookstore.gpo.gov>. The International Standard Book Number is 9780160952975.

Historical Note

Adopted effective October 17, 1986 (Supp. 86-5). Former Section R17-4-76 renumbered without change as Section R17-4-510 (Supp. 87-2). Section recodified to R17-4-406 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). New Section recodified from R17-4-705 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). Amended by final expedited rulemaking at 26 A.A.R. 3147, with an immediate effective date of December 3, 2020 (Supp. 20-4).

R17-4-511. Repealed**Historical Note**

Adopted effective April 21, 1980 (Supp. 80-2). Former Section R17-4-62 renumbered without change as Section R17-4-511 (Supp. 87-2). Section repealed by final rulemaking at 7 A.A.R. 3831, effective August 10, 2001 (Supp. 01-3).

R17-4-512. Child Restraint Systems in Motor Vehicles

The Department incorporates by reference the Federal Motor Vehicle Safety Standards for child restraint systems under 49 CFR 571.213, revised as of October 1, 2019, and no later amendments or editions. The incorporated material is on file with the Department at 206 S. 17th Avenue, Phoenix, AZ 85007. The incorporated material is published by National Archives and Records Administration, Office of the Federal Register, 8601 Adelphi Road, College Park, MD 20740-6001, and printed and distributed by the U.S. Government Publishing Office, P.O. Box 979050, St. Louis, MO 63197-9000. The incorporated material can be viewed online at <http://www.ofr.gov> or <https://www.govinfo.gov/app/collection/cfr> and ordered online by visiting the U.S. Government Online Bookstore at <http://bookstore.gpo.gov>. The International Standard Book Number is 9780160954894.

Historical Note

Former Rule, General Order 92. Former Section R17-4-37 renumbered without change as Section R17-4-512 (Supp. 87-2). Section recodified to R17-5-302 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). New Section R17-4-512 recodified from R17-4-704 at 7 A.A.R. 4157, effective September 7, 2001 (Supp. 01-3).

Amended by final rulemaking at 14 A.A.R. 397, effective March 8, 2008 (Supp. 08-1). Amended by final expedited rulemaking at 26 A.A.R. 3147, with an immediate effective date of December 3, 2020 (Supp. 20-4).

R17-4-513. Emergency Expired**Historical Note**

Emergency rule adopted effective January 4, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-1). Emergency expired. Emergency rule re-adopted effective May 2, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-2). Emergency expired.

R17-4-514. Emergency Expired**Historical Note**

Emergency rule adopted effective January 4, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-1). Emergency expired. Emergency rule re-adopted effective April 25, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-2). Emergency expired.

R17-4-515. Reserved**R17-4-516. Reserved****R17-4-517. Reserved****R17-4-518. Reserved****R17-4-519. Reserved****R17-4-520. Recodified****Historical Note**

Adopted as Section R17-4-301 and renumbered as Section R17-4-520 effective September 22, 1987 (Supp. 87-3). Section recodified to R17-4-502 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

R17-4-521. Recodified**Historical Note**

Adopted as Section R17-4-310 and renumbered as Section R17-4-521 effective September 22, 1987 (Supp. 87-3). Section recodified to R17-4-503 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

R17-4-522. Recodified**Historical Note**

Adopted as Section R17-4-320 and renumbered as Section R17-4-522 effective September 22, 1987 (Supp. 87-3). Amended effective April 12, 1994 (Supp. 94-2). Section recodified to R17-4-506 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

ARTICLE 6. EXPIRED**R17-4-601. Reserved****R17-4-602. Reserved****R17-4-603. Reserved****R17-4-604. Reserved****R17-4-605. Reserved****R17-4-606. Repealed****Historical Note**

Adopted effective February 6, 1984 (Supp. 84-1). Former Section R17-4-507 renumbered without change as Section R17-4-606 (Supp. 87-2). Repealed by summary rulemaking with an interim effective date of March 8,

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1996; filed in the Office of the Secretary of State February 16, 1996 (Supp. 96-1).

R17-4-607. Repealed**Historical Note**

Adopted effective August 24, 1982 (Supp. 82-4). Former Section R17-4-501 renumbered without change as Section R17-4-607 (Supp. 87-2). Emergency amendments adopted and filed August 24, 1990, effective September 27, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-3). Emergency amendments repealed, new emergency amendments adopted effective October 1, 1990, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 90-4). Emergency expired. Emergency amendments re-repealed, new emergency amendments readopted effective February 12, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-1). Emergency expired. Emergency amendments re-repealed, new emergency amendments re-adopted effective August 6, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-3). Emergency expired. Emergency amendments re-adopted effective November 14, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency expired. Repealed by summary rulemaking with an interim effective date of March 8, 1996; filed in the Office of the Secretary of State February 16, 1996 (Supp. 96-1).

R17-4-608. Expired**Historical Note**

Adopted effective August 18, 1983 (Supp. 83-4). Former Section R17-4-504 renumbered without change as Section R17-4-608 (Supp. 87-2). Section expired under A.R.S. § 41-1056(J) at 19 A.A.R. 2855, effective June 28, 2013 (Supp. 13-3).

R17-4-609. Expired**Historical Note**

Adopted effective March 7, 1983, to apply to chassis and bodies placed in production after May 1, 1983 (Supp. 83-2). Former Section R17-4-502 renumbered without change as Section R17-4-609 (Supp. 87-2). Section expired under A.R.S. § 41-1056(J) at 19 A.A.R. 2855, effective June 28, 2013 (Supp. 13-3).

R17-4-610. Expired**Historical Note**

Adopted effective February 11, 1983 (Supp. 83-1). Former Section R17-4-503 renumbered without change as Section R17-4-610 (Supp. 87-2). Section expired under A.R.S. § 41-1056(J) at 19 A.A.R. 2855, effective June 28, 2013 (Supp. 13-3).

R17-4-611. Expired**Historical Note**

Adopted effective August 24, 1983 (Supp. 83-4). Former Section R17-4-506 renumbered without change as Section R17-4-611 (Supp. 87-2). Section expired under A.R.S. § 41-1056(J) at 19 A.A.R. 2855, effective June 28, 2013 (Supp. 13-3).

R17-4-612. Expired**Historical Note**

Adopted effective August 18, 1983 (Supp. 83-4). Former Section R17-4-505 renumbered without change as Section R17-4-612 (Supp. 87-2). R17-4-612 amended by

summary action; Appendices A and B repealed by summary action with an interim effective date March 8, 1996; filed in the Office of the Secretary of State February 16, 1996 (Supp. 96-1). Section expired under A.R.S. § 41-1056(J) at 19 A.A.R. 2855, effective June 28, 2013 (Supp. 13-3).

ARTICLE 7. HAZARDOUS MATERIALS ENDORSEMENT**R17-4-701. Definitions**

In addition to the definitions contained in 49 CFR 1572, the following words and phrases apply to this Article:

“Applicant” means an individual who applies to obtain an original or renewal HME.

“CDL” means commercial driver license.

“Department” has the same meaning as defined under A.R.S. § 28-101.

“HME” means Hazardous Materials Endorsement.

“Security Threat Assessment” means a check by TSA that includes a fingerprint-based criminal history records check, an intelligence-related background check, and a final disposition.

“Transfer applicant” means an individual with an existing HME issued by another state, applying to the state of Arizona for an HME.

“TSA” means the U.S. Transportation Security Administration.

Historical Note

Adopted effective February 1, 1994 (Supp. 94-1). Section recodified to R17-4-309 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). New Section made by final rulemaking at 13 A.A.R. 684, effective April 9, 2007 (Supp. 07-1). Amended by final rulemaking at 13 A.A.R. 3368, effective November 10, 2007 (Supp. 07-3). Amended by final rulemaking at 24 A.A.R. 1543, effective May 1, 2018 (Supp. 18-2).

Appendix A. Recodified**Historical Note**

Adopted effective February 1, 1994 (Supp. 94-1). Appendix recodified to 17 A.A.C. 4, Article 3 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

R17-4-702. Scope

This Article applies to commercial drivers who are applying for an original, renewal, or transfer of an HME, in accordance with 49 CFR 1572. The Department incorporates by reference 49 CFR 1572, revised as of October 1, 2016, and no later amendments or editions. The incorporated material is on file with the Department at 206 S. 17th Avenue, Phoenix, AZ 85007. The incorporated material is published by National Archives and Records Administration, Office of the Federal Register, 8601 Adelphi Road, College Park, MD 20740-6001, and is printed and distributed by the U.S. Government Publishing Office, P.O. Box 979050, St. Louis, MO 63197-9000. The incorporated material can be viewed online at <http://www.ofr.gov> or <https://www.gpo.gov/fdsys> and ordered online by visiting the U.S. Government Online Bookstore at <http://bookstore.gpo.gov>. The International Standard Book Number is 9780160935534.

Historical Note

Adopted effective November 15, 1989 (Supp. 89-4). Amended effective October 11, 1995 (Supp. 95-4). Section recodified to R17-1-202 at 7 A.A.R. 3477, effective July 20, 2001 (Supp. 01-3). New Section made by final rulemaking at 13 A.A.R. 684, effective April 9, 2007

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(Supp. 07-1). Amended by final rulemaking at 13 A.A.R. 3368, effective November 10, 2007 (Supp. 07-3). Amended by final rulemaking at 24 A.A.R. 1543, effective May 1, 2018 (Supp. 18-2).

R17-4-703. Expired**Historical Note**

New Section made by exempt rulemaking at 7 A.A.R. 2518, effective May 25, 2001 (Supp. 01-2). Section recodified to R17-1-204 at 7 A.A.R. 3477, effective July 20, 2001 (Supp. 01-3). New Section made by final rulemaking at 13 A.A.R. 684, effective April 9, 2007 (Supp. 07-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 34, effective June 30, 2016 (Supp. 16-4).

R17-4-704. Requirements for an HME

To receive an HME an applicant shall:

1. Possess a valid Arizona CDL,
2. Be at least 21 years of age,
3. Successfully complete all required testing under R17-4-705,
4. Pay all applicable fees under R17-4-706,
5. Make application to TSA for a Security Threat Assessment, and
6. Receive a Determination of No Security Threat from TSA.

Historical Note

Adopted effective October 6, 1983 (Supp. 83-5). Former Section R17-4-49 renumbered without change as Section R17-4-704 (Supp. 87-2). Amended by final rulemaking at 7 A.A.R. 3834, effective August 10, 2001 (Supp. 01-3). Section recodified to R17-4-512 at 7 A.A.R. 4157, effective September 7, 2001 (Supp. 01-3). New Section made by final rulemaking at 13 A.A.R. 684, effective April 9, 2007 (Supp. 07-1).

R17-4-705. Required Testing

- A. Original and renewal applicants shall successfully complete the testing requirements under A.R.S. § 28-3223.
- B. A transfer applicant shall be required to comply with HME knowledge test requirements under A.R.S. § 28-3223, and pay any applicable fee under R17-4-706.

Historical Note

Adopted effective August 2, 1978 (Supp. 78-4). Former Section R17-4-61 renumbered without change as Section R17-4-705 (Supp. 87-2). Section recodified to R17-4-510 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). New Section made by final rulemaking at 13 A.A.R. 684, effective April 9, 2007 (Supp. 07-1). Amended by final rulemaking at 13 A.A.R. 3368, effective November 10, 2007 (Supp. 07-3). Amended by final rulemaking at 24 A.A.R. 1543, effective May 1, 2018 (Supp. 18-2).

R17-4-706. Fees

All applicants and transfer applicants shall pay all applicable fees as prescribed by:

1. TSA for a Security Threat Assessment, and
2. A.R.S. § 28-3002.

Historical Note

Former Rule, General Order 96. Former Section R17-4-39 renumbered without change as Section R17-4-706 (Supp. 87-2). Section recodified to R17-4-407 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). New Section made by final rulemaking at 13 A.A.R. 684, effective April 9, 2007 (Supp. 07-1). Amended by final rulemaking at 24 A.A.R. 1543, effective May 1, 2018

(Supp. 18-2).

R17-4-707. 60-Day Notice to Apply

- A. The Department shall notify an existing HME holder that a new Security Threat Assessment shall be successfully passed in order to retain the HME 60 days prior to the expiration of the Security Threat Assessment and the corresponding HME.
- B. Upon expiration of the Department's 60 Day Notice to Apply, the Department shall cancel the Arizona driver license privileges of an applicant who fails to apply for a Security Threat Assessment and fails to remove the HME.

Historical Note

Adopted as an emergency effective April 24, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 85-2). Emergency expired. Former Section R17-4-66 renumbered and reserved as R17-4-707 (Supp. 87-2). New Section R17-4-66 adopted and renumbered as Section R17-4-707 effective August 11, 1987 (Supp. 87-3). Amended by final rulemaking at 6 A.A.R. 4668, November 14, 2000 (Supp. 00-4). Section recodified to R17-1-203 at 7 A.A.R. 3477, effective July 20, 2001 (Supp. 01-3). New Section made by final rulemaking at 13 A.A.R. 684, effective April 9, 2007 (Supp. 07-1). Amended by final rulemaking at 24 A.A.R. 1543, effective May 1, 2018 (Supp. 18-2).

R17-4-708. Security Threat Assessment

- A. An applicant for an HME shall successfully pass a Security Threat Assessment every five years.
- B. An applicant subject to any of the following actions, as defined under A.R.S. § 28-3001, shall obtain a new Security Threat Assessment and HME:
 1. Cancellation,
 2. Suspension for a period of one year or more,
 3. Expiration for a period of one year or more, and
 4. Revocation for a period of one year or more.

Historical Note

Adopted effective January 13, 1993 (Supp. 93-1). Section recodified to R17-4-310 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3). New Section made by final rulemaking at 13 A.A.R. 684, effective April 9, 2007 (Supp. 07-1).

R17-4-709. Determination of Security Threat

Upon notification by TSA that an applicant has failed to successfully pass the Security Threat Assessment:

1. For an original applicant:
 - a. The Department will deny the request for an HME; and
 - b. If otherwise qualified, the applicant may apply for a CDL without an HME.
2. For a renewal applicant:
 - a. The Department shall immediately cancel the HME.
 - b. The Department will notify an HME applicant with a Notice of Action that the applicant has 15 days from the notice date to have the HME removed.
 - c. The applicant shall visit a CDL office for removal of the HME.
 - d. If the applicant fails to comply with the Department's Notice of Action, the Department shall cancel the applicant's Arizona driver license privilege.
 - e. Upon removal of an HME by the Department under this Section, an applicant, if otherwise qualified, may continue to hold a CDL.

Historical Note

Adopted by an emergency action effective December 1, 1998, pursuant to A.R.S. § 41-1026, effective for a maxi-

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maximum of 180 days (Supp. 98-4). Emergency expired May 29, 1999; Section renewed and amended by emergency rulemaking, pursuant to A.R.S. § 41-1026, at 5 A.A.R. 2433, effective July 7, 1999 for a maximum of 180 days (Supp. 99-3). Emergency Section expired January 3, 2000, pursuant to A.R.S. § 1026(C); new Section adopted by final rulemaking at 6 A.A.R. 549, effective January 11, 2000 (Supp. 00-1). Amended by final rulemaking at 7 A.A.R. 59, effective December 7, 2000 (Supp. 00-4). Section recodified to R17-5-601 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). New Section made by final rulemaking at 13 A.A.R. 684, effective April 9, 2007 (Supp. 07-1). Amended by final rulemaking at 24 A.A.R. 1543, effective May 1, 2018 (Supp. 18-2).

R17-4-709.01. Recodified**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 549, effective January 11, 2000 (Supp. 00-1). Section recodified to R17-5-602 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

R17-4-709.02. Recodified**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 549, effective January 11, 2000 (Supp. 00-1). Section recodified to R17-5-603 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

R17-4-709.03. Recodified**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 549, effective January 11, 2000 (Supp. 00-1). Section recodified to R17-5-604 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

R17-4-709.04. Recodified**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 549, effective January 11, 2000 (Supp. 00-1). Amended by final rulemaking at 7 A.A.R. 59, effective December 7, 2000 (Supp. 00-4). Section recodified to R17-5-605 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

R17-4-709.05. Recodified**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 549, effective January 11, 2000 (Supp. 00-1). Section recodified to R17-5-606 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

R17-4-709.06. Recodified**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 549, effective January 11, 2000 (Supp. 00-1). Section recodified to R17-5-607 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

Appendix A. Recodified**Historical Note**

Appendix A adopted by an emergency action effective December 1, 1998, pursuant to A.R.S. § 41-1026, effective for a maximum of 180 days (Supp. 98-4). Emergency expired May 29, 1999; Appendix A renewed and amended by emergency rulemaking, pursuant to A.R.S. § 41-1026, at 5 A.A.R. 2433, effective July 7, 1999 for a

maximum of 180 days (Supp. 99-3). Emergency Appendix A expired January 3, 2000, pursuant to A.R.S. § 1026(C); new Appendix A adopted by final rulemaking at 6 A.A.R. 549, effective January 11, 2000 (Supp. 00-1). Amended by final rulemaking at 7 A.A.R. 59, effective December 7, 2000 (Supp. 00-4). Appendix recodified to 17 A.A.C. 5, Article 6 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

Appendix B. Recodified**Historical Note**

Appendix B adopted by an emergency action effective December 1, 1998, pursuant to A.R.S. § 41-1026, effective for a maximum of 180 days (Supp. 98-4). Emergency expired May 29, 1999; Appendix B renewed and amended by emergency rulemaking, pursuant to A.R.S. § 41-1026, at 5 A.A.R. 2433, effective July 7, 1999 for a maximum of 180 days (Supp. 99-3). Emergency Appendix B expired January 3, 2000, pursuant to A.R.S. § 1026(C); new Appendix B adopted by final rulemaking at 6 A.A.R. 549, effective January 11, 2000 (Supp. 00-1). Appendix recodified to 17 A.A.C. 5, Article 6 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

Appendix C. Recodified**Historical Note**

Appendix C adopted by an emergency action effective December 1, 1998, pursuant to A.R.S. § 41-1026, effective for a maximum of 180 days (Supp. 98-4). Emergency expired May 29, 1999; Appendix C renewed by emergency rulemaking, pursuant to A.R.S. § 41-1026, at 5 A.A.R. 2433, effective July 7, 1999 for a maximum of 180 days (Supp. 99-3). Emergency Appendix C expired January 3, 2000, pursuant to A.R.S. § 1026(C); new Appendix C adopted by final rulemaking at 6 A.A.R. 549, effective January 11, 2000 (Supp. 00-1). Appendix recodified to 17 A.A.C. 5, Article 6 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

R17-4-709.07. Recodified**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 549, effective January 11, 2000 (Supp. 00-1). Amended by final rulemaking at 7 A.A.R. 59, effective December 7, 2000 (Supp. 00-4). Section recodified to R17-5-608 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

R17-4-709.08. Recodified**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 549, effective January 11, 2000 (Supp. 00-1). Section recodified to R17-5-609 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

R17-4-709.09. Recodified**Historical Note**

New Section adopted by final rulemaking at 6 A.A.R. 654, effective January 11, 2000 (Supp. 00-1). Amended by final rulemaking at 7 A.A.R. 59, effective December 7, 2000 (Supp. 00-4). Section recodified to R17-5-610 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

Exhibit A. Recodified**Historical Note**

New Form adopted by final rulemaking at 6 A.A.R. 654, effective January 11, 2000 (Supp. 00-1). Heading "Form

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A” changed to “Exhibit A” to conform with R1-1-412 (Supp. 00-3). Exhibit recodified to 17 A.A.C. 5, Article 6 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

Exhibit B. Recodified**Historical Note**

New Exhibit adopted by final rulemaking at 7 A.A.R. 59, effective December 7, 2000 (Supp. 00-4). Exhibit recodified to 17 A.A.C. 5, Article 6 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3).

R17-4-709.10. Recodified**Historical Note**

New Section adopted by final rulemaking at 7 A.A.R. 59, effective December 7, 2000 (Supp. 00-4). Section recodified to R17-4-408 at 7 A.A.R. 3479, effective July 20, 2001 (Supp. 01-3).

R17-4-710. Requests for Administrative Hearing

- A.** In the event an applicant has failed to successfully complete the Security Threat Assessment or failed to receive a Determination of No Security Threat, the applicant may make an appeal directly through TSA, but cannot request an administrative hearing from the Department.
- B.** An applicant whose Arizona driver license privileges have been canceled under R17-4-707 or R17-4-709 may request an administrative hearing from the Department as prescribed under 17 A.A.C. 1, Article 5. The hearing is held in accordance with the procedures prescribed under A.R.S. Title 41, Chapter 6, Article 6 and 17 A.A.C. 1, Article 5.

Historical Note

New Section adopted by final rulemaking at 5 A.A.R. 2928, effective August 5, 1999 (Supp. 99-3). Section recodified to R17-1-101 at 7 A.A.R. 919, effective January 24, 2001 (Supp. 01-1). New Section made by final rulemaking at 13 A.A.R. 684, effective April 9, 2007 (Supp. 07-1). Amended by final rulemaking at 24 A.A.R. 1543, effective May 1, 2018 (Supp. 18-2).

R17-4-711. Expired**Historical Note**

New Section made by final rulemaking at 13 A.A.R. 684, effective April 9, 2007 (Supp. 07-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 34, effective June 30, 2016 (Supp. 16-4).

R17-4-712. Transfer Applicant

- A.** Applicability. A transfer applicant shall comply with the provisions of this Article except as otherwise required by this Section.
- B.** Existing TSA approval. Upon application by a transfer applicant who has successfully passed a Security Threat Assessment prior to application in Arizona, the Department shall:
1. Verify the TSA approval of a Determination of No Security Threat;
 2. Issue an Arizona CDL with an HME; and
 3. Consider an applicant who has been subject to any action under R17-4-708(B) an original applicant and shall require the applicant to undergo a new Security Threat Assessment and testing requirements under R17-4-705.

Historical Note

New Section made by final rulemaking at 13 A.A.R. 3368, effective November 10, 2007 (Supp. 07-3). Amended by final rulemaking at 24 A.A.R. 1543, effective May 1, 2018 (Supp. 18-2).

ive May 1, 2018 (Supp. 18-2).

Table A. Recodified**Historical Note**

Table A adopted by final rulemaking at 5 A.A.R. 2928, effective August 5, 1999 (Supp. 99-3). Table recodified to 17 A.A.C. 1, Article 1 at 7 A.A.R. 919, effective January 24, 2001 (Supp. 01-1).

ARTICLE 8. MOTOR VEHICLE RECORDS**R17-4-801. Definitions**

“Batch” means a query-command method that initiates simultaneous production of an electronic file or series of requests that may have delayed results.

“Certified record” means a copy of a document designated as a true copy by the agency officer entrusted with custody of the original to be used for purposes prescribed under A.R.S. § 28-442.

“Commercial driver license record” has the same meaning as a CDLIS motor vehicle record as defined in 49 CFR 384.105.

“Customer number” means the system-generated, or other distinguishing number, assigned by the Department to each person with a record on the Department’s database, which includes the driver license number assigned to a person for a driver license, identification card, or instruction permit.

“Driver record” means a motor vehicle record more specifically defined to include any data that pertains to a driver license, identification card, instruction permit, or driver related activities.

“Interactive” means an electronic query-command method individually initiated by a person that produces immediate results.

“Reasonable costs” has the same meaning as defined in A.R.S. § 12-351.

“Requester” means the person, as defined in A.R.S. § 41-1001, requesting a motor vehicle record.

“Special MVR” means a motor vehicle record that is comprised of the least possible subset of information necessary to respond to the type of request received.

“Support document” means any customer record maintained by the Department in an electronic, hardcopy, or microfilm file storage format.

“Title and registration record” means a motor vehicle record more specifically defined to include any data that pertains to a vehicle title or registration record.

Historical Note

Adopted effective June 29, 1990 (Supp. 90-2). Section recodified to R17-5-701 at 7 A.A.R. 3483, effective July 20, 2001 (Supp. 01-3). New Section made by final rulemaking at 13 A.A.R. 4376, effective February 2, 2008 (Supp. 07-4). Amended by final expedited rulemaking at 24 A.A.R. 3498, effective December 4, 2018 (Supp. 18-4).

R17-4-802. Motor Vehicle Record Request

- A.** Identification requirements. The requester of a motor vehicle record shall present valid identification as indicated on the motor vehicle record request form or at the request of the Department at the time a motor vehicle record request is made.
- B.** Charges and exemptions. The requester of a motor vehicle record shall pay the appropriate motor vehicle record copy

NOTICE OF FINAL RULEMAKING
TITLE 17. TRANSPORTATION
CHAPTER 4. DEPARTMENT OF TRANSPORTATION
TITLE, REGISTRATION, AND DRIVER LICENSES

Statutory Authority

General Authority for Rulemaking

A.R.S. § 28-366. Director; rules

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

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

A.R.S. § 28-5204. Administration and enforcement; rules

A. In the administration and enforcement of this chapter, the department of transportation shall adopt:

1. Reasonable rules it deems proper governing the safety operations of motor carriers, including rules governing safety operations of motor carriers, shippers and vehicles transporting hazardous materials, hazardous substances or hazardous wastes and shall prescribe necessary forms. In determining reasonable rules, the department of transportation shall consider:

(a) The nature of the operations and regulation of public service corporations as defined in article XV, sections 2 and 10, Constitution of Arizona.

(b) Rules adopted by the director of environmental quality pursuant to section 49-855.

2. Rules necessary to enforce and administer this chapter, including rules setting forth reasonable procedures to be followed in the enforcement of this chapter and rules adopting transporter safety standards for hazardous materials, hazardous substances and hazardous waste. In adopting the rules, the department shall consider, as evidence of generally accepted safety standards, the publications of the United States department of transportation and the environmental protection agency.

B. Rules adopted by the department of transportation also apply to a manufacturer, shipper, motor carrier and driver.

C. The department of public safety shall and a political subdivision may enforce this chapter and any rule adopted pursuant to this chapter by the department of transportation. A person acting for a political subdivision in enforcing this chapter is required to be certified by the department of public safety as qualified for the enforcement activities.

D. The department may audit records and inspect vehicles that are subject to this chapter.

Specific Statutes

A.R.S. § 28-3103. Driver license endorsements

A. A driver license applicant shall obtain the following endorsements to the applicant's driver license and shall submit to an examination appropriate to the type of endorsement if the applicant operates one or more of the following vehicles:

1. A motorcycle endorsement for operation of a motorcycle if the applicant qualifies for a class M license and if the applicant qualifies for or has a class A, B, C, D or G license.

2. A hazardous materials endorsement on a class A, B or C license for operation of a vehicle that transports hazardous materials, wastes or substances in a quantity and under circumstances that require the placarding or marking of the transport vehicle as required by the department's safety rules prescribed pursuant to chapter 14 of this title. The department or an outside source authorized by the department and approved by the transportation security administration may:

(a) Conduct background checks in accordance with the transportation security administration procedures.

(b) Require that all hazardous materials endorsement applicants submit fingerprints.

3. A double-triple trailer endorsement on a class A license for operation of a vehicle towing double or triple trailers.

4. A passenger vehicle endorsement on a class A, B or C license for operation of a bus designed to transport sixteen or more passengers, including the driver, or a school bus.

5. A tank vehicle endorsement on a class A, B or C license for operation of a tank vehicle. For the purposes of this paragraph, "tank vehicle" means a commercial motor vehicle that is designed to transport a liquid or gaseous material within a tank that is either permanently or temporarily attached to the vehicle or chassis, including a cargo tank and a portable tank and excluding a portable tank having a rated capacity under one thousand gallons.

6. A school bus endorsement on a class A, B or C license for operation of a school bus. Applicants shall successfully complete both a written knowledge test and a driving skills test to obtain a school bus endorsement.

B. When applying for a commercial driver license endorsement pursuant to article 5 of this chapter, the applicant shall successfully complete the skills portion of the examination in a motor vehicle or vehicle combination applicable to the endorsement.

C. On notification by the transportation security administration that an individual's authorization to hold a hazardous materials endorsement has been terminated, the department shall immediately cancel the hazardous materials endorsement on the driver's commercial driver license.

A.R.S. § 28-3159. Restricted licenses

A. With good cause, the department may issue the following restricted driver licenses:

1. A driver license with any of the following:

(a) Restrictions suitable to the licensee's driving ability for the type of motor vehicle or special mechanical control devices required on a motor vehicle that the licensee may operate.

(b) Restrictions suitable to the licensee's ability to drive a motor vehicle in areas, at locations or on highways or during certain times.

(c) Other restrictions as the department determines appropriate to ensure the safe operation of a motor vehicle by the licensee.

2. A class A, B or C driver license that restricts the driver from operating:

(a) A commercial motor vehicle equipped with air brakes, if the applicant either fails the air brake component of the knowledge examination or performs the skills test in a vehicle that is not equipped with air brakes.

(b) A vehicle in interstate commerce, if the applicant is not subject to 49 Code of Federal Regulations part 391.

(c) A motor vehicle for the purposes of interstate commerce, if an applicant for a class A, B or C license is at least eighteen years of age.

3. A class A, B or C driver license with other restrictions that the department determines are appropriate to ensure the safe operation of a commercial motor vehicle by the licensee.

4. A class M license that restricts the driver from driving a vehicle other than a motorcycle, motor driven cycle or moped with a maximum piston displacement of one hundred cubic centimeters or less, if the applicant performs the driving examination with a motorcycle, motor driven cycle or moped with a maximum piston displacement of one hundred cubic centimeters or less.

5. A special ignition interlock restricted driver license pursuant to chapter 4, article 3.1 of this title.

6. A license restricting the travel of the driver as provided in section 25-518.

B. The department may either issue a special restricted license or display the restrictions on the usual driver license form.

A.R.S. § 28-3223. Original applicant; requirements; expiration; renewal examination

A. In addition to the requirements applicable to all driver license applicants, an original applicant for a class A, B or C license is subject to the following requirements:

1. The applicant shall submit evidence of compliance with medical standards and requirements that the department adopts by rule.

2. The applicant must have held a driver license for at least one year either in this state, any other state or a foreign country.

3. The applicant shall take additional knowledge examinations to demonstrate understanding of the following:

(a) Safety operation rules.

(b) Commercial motor vehicle safety control systems.

(c) Safe vehicle control.

(d) The relationship of cargo to vehicle control.

(e) Basic hazardous materials knowledge.

(f) The objectives and proper procedures for performing vehicle safety inspections.

(g) Air brake systems.

(h) Legal requirements for size, weight and vehicle configurations.

(i) Emergency procedures.

4. In addition to the other requirements of this section, an applicant for a class A driver license shall demonstrate a knowledge and understanding of:

(a) Vehicle coupling and uncoupling.

(b) Unique combination vehicle inspections.

5. The applicant shall take a driving test in a vehicle or vehicle combination that at least meets the minimum size requirements for the class of driver license sought. The driving test shall include a demonstration of familiarity with pretrip inspection procedures.

B. A person possessing a commercial driver license on or before June 30, 2005 shall renew the license within five years according to procedures established by the department.

C. Notwithstanding section 28-3171, the holder of a class A, B or C driver license shall renew the license every five years in a manner prescribed by the department.

D. The department may administer an examination to a renewal applicant for a class A, B or C driver license. This examination on renewal shall include the following:

1. Evidence of compliance with medical standards adopted by the department.

2. Administration of knowledge tests or road tests, or both, as required of an original applicant.

NOTICE OF FINAL RULEMAKING
TITLE 17. TRANSPORTATION
CHAPTER 4. DEPARTMENT OF TRANSPORTATION
TITLE, REGISTRATION, AND DRIVER LICENSES

Definitions of Terms

A.R.S. § 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 eighty or fewer inches in width.
 - (iii) Has an unladen weight of two thousand five hundred pounds or less.
 - (iv) Travels on four or more nonhighway tires.
 - (v) Has a steering wheel for steering control.
 - (vi) Has a rollover protective structure.
 - (vii) Has an occupant retention system.
4. "Authorized emergency vehicle" means any of the following:
 - (a) A fire department vehicle.
 - (b) A police vehicle.
 - (c) An ambulance or emergency vehicle of a municipal department or public service corporation that is designated or authorized by the department or a local authority.
 - (d) Any other ambulance, fire truck or rescue vehicle that is authorized by the department in its sole discretion and that meets liability insurance requirements prescribed by the department.

5. "Autocycle" means a three-wheeled motorcycle on which the driver and passengers ride in a fully or partially enclosed seating area that is equipped with a roll cage, safety belts for each occupant and antilock brakes and that is designed to be controlled with a steering wheel and pedals.
6. "Automotive recycler" means a person that is engaged in the business of buying or acquiring a motor vehicle solely for the purpose of dismantling, selling or otherwise disposing of the parts or accessories and that removes parts for resale from six or more vehicles in a calendar year.
7. "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.
8. "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.
9. "Board" means the transportation board.
10. "Bus" means a motor vehicle designed for carrying sixteen or more passengers, including the driver.
11. "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.
12. "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.
13. "Certificate of title" means a paper document or an electronic record that is issued by the department and that indicates ownership of a vehicle.
14. "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.
15. "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.
16. "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.
17. "County highway" means a public road that is constructed and maintained by a county.
18. "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.

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

(vi) Has a maximum speed that does not exceed twenty miles per hour, with or without human propulsion, on a paved level surface.

(b) Does not include an electric miniature scooter.

29. "Evidence" includes both of the following:

(a) A display on a wireless communication device of a department-generated driver license, nonoperating identification license, vehicle registration card or other official record of the department that is presented to a law enforcement officer or in a court or an administrative proceeding.

(b) An electronic or digital license plate authorized pursuant to section 28-364.

30. "Farm" means any lands primarily used for agriculture production.

31. "Farm tractor" means a motor vehicle designed and used primarily as a farm implement for drawing implements of husbandry.

32. "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.

33. "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.

34. "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.

35. "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.

36. "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.

37. "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.

38. "Local authority" means any county, municipal or other local board or body exercising jurisdiction over highways under the constitution and laws of this state.

39. "Manufacturer" means a person engaged in the business of manufacturing motor vehicles, trailers or semitrailers.

40. "Moped" means a bicycle, not including an electric bicycle, an electric miniature scooter or an electric standup scooter, that is equipped with a helper motor if the vehicle has a maximum piston displacement of fifty cubic centimeters or less, a brake horsepower of one and one-half or less and a maximum speed of twenty-five miles per hour or less on a flat surface with less than a one percent grade.

41. "Motorcycle" means a motor vehicle that has a seat or saddle for the use of the rider and that is designed to travel on not more than three wheels in contact with the ground but excludes a tractor, an electric bicycle, an electric miniature scooter, an electric standup scooter and a moped.

42. "Motor driven cycle" means a motorcycle, including every motor scooter, with a motor that produces not more than five horsepower but does not include an electric bicycle, an electric miniature scooter or an electric standup scooter.

43. "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.

44. "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 scrap vehicle, a personal delivery device, a personal mobile cargo carrying device, a motorized wheelchair, an electric personal assistive mobility device, an electric bicycle, an electric miniature scooter, an electric standup scooter or a motorized skateboard. For the purposes of this subdivision:

(i) “Motorized skateboard” means a self-propelled device that does not have handlebars and that has a motor, a deck on which a person may ride and at least two tandem wheels in contact with the ground.

(ii) “Motorized wheelchair” means a self-propelled wheelchair that is used by a person for mobility.

45. “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.

46. “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.

47. “Nonresident” means a person who is not a resident of this state as defined in section 28-2001.

48. “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.

49. “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.

50. “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.

51. “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.

52. "Personal delivery device":

(a) Means a device that is both of the following:

(i) Manufactured for transporting cargo and goods in an area described in section 28-1225.

(ii) Is equipped with automated driving technology, including software and hardware, that enables the operation of the device with the remote support and supervision of a human.

(b) Does not include a personal mobile cargo carrying device.

53. "Personal mobile cargo carrying device" means an electronically powered device that:

(a) Is operated primarily on sidewalks and within crosswalks and that is designed to transport property.

(b) Weighs less than eighty pounds, excluding cargo.

(c) Operates at a maximum speed of twelve miles per hour.

(d) Is equipped with technology to transport personal property with the active monitoring of a property owner and that is primarily designed to remain within twenty-five feet of the property owner.

(e) Is equipped with a braking system that when active or engaged enables the personal mobile cargo carrying device to come to a controlled stop.

54. "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.

55. "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.

56. "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.

57. "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.

58. "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.

59. "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.

60. "Scrap metal dealer" has the same meaning prescribed in section 44-1641.

61. "Scrap vehicle" has the same meaning prescribed in section 44-1641.

62. "Semitrailer" means a vehicle that is with or without motive power, other than a pole trailer or single-axle tow dolly, that is designed for carrying persons or property and for being drawn by a motor vehicle and that is constructed so that some part of its weight and that of its load rests on or is carried by another vehicle. For the purposes of this paragraph, "pole trailer" has the same meaning prescribed in section 28-601.

63. "Single-axle tow dolly" means a nonvehicle device that is drawn by a motor vehicle, that is designed and used exclusively to transport another motor vehicle and on which the front or rear wheels of the drawn motor vehicle are mounted on the tow dolly while the other wheels of the drawn motor vehicle remain in contact with the ground.

64. "State" means a state of the United States and the District of Columbia.

65. "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.

66. "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.

67. "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.

68. "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.

69. "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.

70. "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.

71. "Trailer" means a vehicle that is with or without motive power, other than a pole trailer or single-axle tow dolly, that is designed for carrying persons or property and for being drawn by a motor vehicle and that is constructed so that no part of its weight rests on the towing vehicle. A semitrailer equipped with an auxiliary front axle commonly known as a dolly is deemed to be a trailer. For the purposes of this paragraph, "pole trailer" has the same meaning prescribed in section 28-601.

72. "Transportation network company" has the same meaning prescribed in section 28-9551.

73. "Transportation network company vehicle" has the same meaning prescribed in section 28-9551.

74. "Transportation network service" has the same meaning prescribed in section 28-9551.

75. "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.

76. "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.

77. "Vehicle":

(a) Means a device in, on or by which a person or property is or may be transported or drawn on a public highway.

(b) Does not include:

(i) Electric bicycles, electric miniature scooters, electric standup scooters and devices moved by human power.

(ii) Devices used exclusively on stationary rails or tracks.

(iii) Personal delivery devices.

(iv) Scrap vehicles.

(v) Personal mobile cargo carrying devices.

78. "Vehicle transporter" means either:

(a) A truck tractor capable of carrying a load and drawing a semitrailer.

(b) A truck tractor with a stinger-steered fifth wheel capable of carrying a load and drawing a semitrailer or a truck tractor with a dolly mounted fifth wheel that is securely fastened to the truck tractor at two or more points and that is capable of carrying a load and drawing a semitrailer.

A.R.S. § 28-3001. Definitions

In this chapter, unless the context otherwise requires:

1. "Cancellation" means the annulment or termination of a driver license because of an error or defect or because the licensee is no longer entitled to the license.

2. "Commercial driver license" means a license that is issued to an individual and that authorizes the individual to operate a class of commercial motor vehicles.

3. "Commercial motor vehicle" means a motor vehicle or combination of motor vehicles that is used in commerce to transport passengers or property and that includes any of the following:

(a) A motor vehicle or combination of motor vehicles that has a gross combined weight rating of twenty-six thousand one or more pounds inclusive of a towed unit with a gross vehicle weight rating of more than ten thousand pounds.

(b) A motor vehicle that has a gross vehicle weight rating of twenty-six thousand one or more pounds.

(c) A bus.

(d) A motor vehicle or combination of motor vehicles that is used in the transportation of materials found to be hazardous for the purposes of the hazardous materials transportation authorization act of 1994 (49 United States Code sections 5101 through 5128) and is required to be placarded under 49 Code of Federal Regulations section 172.504, as adopted by the department pursuant to chapter 14 of this title.

4. "Conviction" has the same meaning prescribed in section 28-101 and also means a final conviction or judgment, including an order of a juvenile court finding that a juvenile has violated a provision of this title or has committed a delinquent act that if committed by an adult constitutes any of the following:
- (a) Criminal damage to property pursuant to section 13-1602, subsection A, paragraph 1.
 - (b) A felony offense in the commission of which a motor vehicle was used, including theft of a motor vehicle pursuant to section 13-1802, unlawful use of means of transportation pursuant to section 13-1803 or theft of means of transportation pursuant to section 13-1814.
 - (c) A forfeiture of bail or collateral deposited to secure a defendant's appearance in court that has not been vacated.
5. "Disqualification" means a prohibition from obtaining a commercial driver license or driving a commercial motor vehicle.
6. "Employer" means a person, including the United States, a state or a political subdivision of a state, that owns or leases a commercial motor vehicle or that assigns a person to operate a commercial motor vehicle.
7. "Endorsement" means an authorization that is added to an individual's driver license and that is required to permit the individual to operate certain types of vehicles.
8. "Foreign" means outside the United States.
9. "Gross vehicle weight rating" means the weight that is assigned by the vehicle manufacturer to a vehicle and that represents the maximum recommended total weight including the vehicle and the load for the vehicle.
10. "Judgment" means a final judgment and any of the following:
- (a) The finding by a court that an individual is responsible for a civil traffic violation.
 - (b) An individual's admission of responsibility for a civil traffic violation.
 - (c) The voluntary or involuntary forfeiture of deposit in connection with a civil traffic violation.
 - (d) A default judgment entered by a court pursuant to section 28-1596.
11. "License class" means, for the purpose of determining the appropriate class of driver license required for the type of motor vehicle or vehicle combination a driver intends to operate or is operating, the class of driver license prescribed in section 28-3101.
12. "Nondomiciled commercial driver license" means a commercial driver license issued to an individual domiciled in a foreign country or to an individual domiciled in another state if that state is prohibited from issuing commercial driver licenses.
13. "Original applicant" means any of the following:
- (a) An applicant who has never been licensed or cannot provide evidence of licensing.
 - (b) An applicant who is applying for a higher class of driver license than the license currently held by the applicant.
 - (c) An applicant who has a license from a foreign country.
14. "Revocation" means that the driver license and driver's privilege to drive a motor vehicle on the public highways of this state are terminated and shall not be renewed or restored, except that an application for a new license may be presented and acted on by the department after one year from the date of revocation.
15. "State of domicile" means the state or jurisdiction where a person has the person's true, fixed and permanent home and principal residence and to which the person has the intention of returning after an absence.

16. "Suspension" means that the driver license and driver's privilege to drive a motor vehicle on the public highways of this state are temporarily withdrawn during the period of the suspension.

17. "Vehicle combination" means a motor vehicle and a vehicle in excess of ten thousand pounds gross vehicle weight that it tows, if the combined gross vehicle weight rating is more than twenty-six thousand pounds.

A.R.S. § 28-3005. Medical or psychological reports; immunity; definitions

A. For medical conditions, a physician or registered nurse practitioner, for psychological conditions, a psychologist, physician, psychiatric mental health nurse practitioner or substance abuse counselor who provides information to the director in good faith and at the written request of a driver license applicant or licensee concerning a person's medical or psychological condition with respect to operation of a motor vehicle is immune from personal liability with respect to the information provided.

B. Notwithstanding the physician-patient, nurse-patient or psychologist-client confidentiality relationship, a physician, registered nurse practitioner or psychologist may voluntarily report a patient to the department who has a medical or psychological condition that in the opinion of the physician, registered nurse practitioner or psychologist could significantly impair the person's ability to safely operate a motor vehicle. If a report is made, the physician, registered nurse practitioner or psychologist shall make the report in writing, including the name, address and date of birth of the patient. On receipt of the report, the department may require an examination of the person reported in the manner provided by section 28-3314. A person shall not bring an action against a physician, registered nurse practitioner or psychologist for not making a report pursuant to this subsection. The physician, registered nurse practitioner or psychologist submitting the report in good faith is immune from civil or criminal liability for making the report pursuant to this subsection. The physician's, registered nurse practitioner's or psychologist's report is subject to subpoena or order to produce in an action except an action against the physician, registered nurse practitioner or psychologist submitting the report.

C. In this section:

1. "Medical or psychological condition" means a condition that could affect a person's functional ability to safely operate a motor vehicle.

2. "Physician" means a medical doctor, optometrist, chiropractor, naturopathic physician, doctor of osteopathy or doctor of homeopathy who is licensed to practice in this state or another state or who is employed by the federal government and practicing in this state or their agents.

3. "Psychiatric mental health nurse practitioner" means a person certified as a registered nurse practitioner in a psychiatric mental health specialty area under the provisions of title 32, chapter 15.

4. "Psychologist" means a person who is licensed pursuant to title 32, chapter 19.1, who is licensed to practice psychology in another state or who is employed by the federal government and practicing in this state.

5. "Registered nurse practitioner" has the same meaning prescribed in section 32-1601.

6. "Substance abuse counselor" means a person who is licensed by the board of behavioral health examiners in this state, who is licensed or certified in another state, who is certified by a board for certification of addiction

counselors, who is a nationally certified addiction counselor or who is employed by the federal government and practicing in this state.

A.R.S. § 32-1601. Definitions

In this chapter, unless the context otherwise requires:

1. “Absolute discharge from the sentence” means completion of any sentence, including imprisonment, probation, parole, community supervision or any form of court supervision.
2. “Appropriate health care professional” means a licensed health care professional whose scope of practice, education, experience, training and accreditation are appropriate for the situation or condition of the patient who is the subject of a consultation or referral.
3. “Approval” means that a regulated training or educational program to prepare persons for licensure, certification or registration has met standards established by the board.
4. “Board” means the Arizona state board of nursing.
5. “Certified nurse midwife” means a registered nurse who:
 - (a) Is certified by the board.
 - (b) Has completed a nurse midwife education program approved or recognized by the board and educational requirements prescribed by the board by rule.
 - (c) Holds a national certification as a certified nurse midwife from a national certifying body recognized by the board.
 - (d) Has an expanded scope of practice in the provision of health care services for women from adolescence to beyond menopause, including antepartum, intrapartum, postpartum, reproductive, gynecologic and primary care, for normal newborns during the first twenty-eight days of life and for men for the treatment of sexually transmitted diseases. The expanded scope of practice under this subdivision includes:
 - (i) Assessing patients, synthesizing and analyzing data and understanding and applying principles of health care at an advanced level.
 - (ii) Managing the physical and psychosocial health care of patients.
 - (iii) Analyzing multiple sources of data, identifying alternative possibilities as to the nature of a health care problem and selecting, implementing and evaluating appropriate treatment.
 - (iv) Making independent decisions in solving complex patient care problems.
 - (v) Diagnosing, performing diagnostic and therapeutic procedures and prescribing, administering and dispensing therapeutic measures, including legend drugs, medical devices and controlled substances, within the scope of the certified nurse midwife practice after meeting requirements established by the board.
 - (vi) Recognizing the limits of the nurse’s knowledge and experience by consulting with or referring patients to other appropriate health care professionals if a situation or condition occurs that is beyond the knowledge and experience of the nurse or if the referral will protect the health and welfare of the patient.
 - (vii) Delegating to a medical assistant pursuant to section 32-1456.

(viii) Performing additional acts that require education and training as prescribed by the board and that are recognized by the nursing profession as proper to be performed by a certified nurse midwife.

6. “Certified nursing assistant” means a person who is registered on the registry of nursing assistants pursuant to this chapter to provide or assist in the delivery of nursing or nursing-related services under the supervision and direction of a licensed nursing staff member. Certified nursing assistant does not include a person who:

- (a) Is a licensed health care professional.
- (b) Volunteers to provide nursing assistant services without monetary compensation.
- (c) Is a licensed nursing assistant.

7. “Certified registered nurse” means a registered nurse who has been certified by a national nursing credentialing agency recognized by the board.

8. “Certified registered nurse anesthetist” means a registered nurse who meets the requirements of section 32-1634.03 and who practices pursuant to the requirements of section 32-1634.04.

9. “Clinical nurse specialist” means a registered nurse who:

- (a) Is certified by the board as a clinical nurse specialist.
- (b) Holds a graduate degree with a major in nursing and completes educational requirements as prescribed by the board by rule.
- (c) Is nationally certified as a clinical nurse specialist or, if certification is not available, provides proof of competence to the board.
- (d) Has an expanded scope of practice based on advanced education in a clinical nursing specialty that includes:
 - (i) Assessing clients, synthesizing and analyzing data and understanding and applying nursing principles at an advanced level.
 - (ii) Managing directly and indirectly a client’s physical and psychosocial health status.
 - (iii) Analyzing multiple sources of data, identifying alternative possibilities as to the nature of a health care problem and selecting appropriate nursing interventions.
 - (iv) Developing, planning and guiding programs of care for populations of patients.
 - (v) Making independent nursing decisions to solve complex client care problems.
 - (vi) Using research skills and acquiring and applying critical new knowledge and technologies to nursing practice.
 - (vii) Prescribing and dispensing durable medical equipment.
 - (viii) Consulting with or referring a client to other health care providers based on assessment of the client’s health status and needs.
 - (ix) Facilitating collaboration with other disciplines to attain the desired client outcome across the continuum of care.
 - (x) Performing additional acts that require education and training as prescribed by the board and that are recognized by the nursing profession as proper to be performed by a clinical nurse specialist.
 - (xi) Prescribing, ordering and dispensing pharmacological agents subject to the requirements and limits specified in section 32-1651.

10. “Conditional license” or “conditional approval” means a license or approval that specifies the conditions under which the regulated party is allowed to practice or to operate and that is prescribed by the board pursuant to section 32-1644 or 32-1663.

11. “Delegation” means transferring to a competent individual the authority to perform a selected nursing task in a designated situation in which the nurse making the delegation retains accountability for the delegation.

12. “Disciplinary action” means a regulatory sanction of a license, certificate or approval pursuant to this chapter in any combination of the following:

(a) A civil penalty for each violation of this chapter, not to exceed \$1,000 for each violation.

(b) Restitution made to an aggrieved party.

(c) A decree of censure.

(d) A conditional license or a conditional approval that fixed a period and terms of probation.

(e) Limited licensure.

(f) Suspension of a license, a certificate or an approval.

(g) Voluntary surrender of a license, a certificate or an approval.

(h) Revocation of a license, a certificate or an approval.

13. “Health care institution” has the same meaning prescribed in section 36-401.

14. “Licensed nursing assistant” means a person who is licensed pursuant to this chapter to provide or assist in the delivery of nursing or nursing-related services under the supervision and direction of a licensed nursing staff member. Licensed nursing assistant does not include a person who:

(a) Is a licensed health care professional.

(b) Volunteers to provide nursing assistant services without monetary compensation.

(c) Is a certified nursing assistant.

15. “Licensee” means a person who is licensed pursuant to this chapter or in a party state as defined in section 32-1668.

16. “Limited license” means a license that restricts the scope or setting of a licensee’s practice.

17. “Medication order” means a written or verbal communication given by a certified registered nurse anesthetist to a health care professional to administer a drug or medication, including controlled substances.

18. “Practical nurse” means a person who holds a practical nurse license issued pursuant to this chapter or pursuant to a multistate compact privilege and who practices practical nursing as defined in this section.

19. “Practical nursing” includes the following activities that are performed under the supervision of a physician or a registered nurse:

(a) Contributing to the assessment of the health status of individuals and groups.

(b) Participating in the development and modification of the strategy of care.

(c) Implementing aspects of the strategy of care within the nurse’s scope of practice.

(d) Maintaining safe and effective nursing care that is rendered directly or indirectly.

(e) Participating in the evaluation of responses to interventions.

(f) Delegating nursing activities within the scope of practice of a practical nurse.

(g) Performing additional acts that require education and training as prescribed by the board and that are recognized by the nursing profession as proper to be performed by a practical nurse.

20. "Presence" means within the same health care institution or office as specified in section 32-1634.04, subsection A, and available as necessary.

21. "Registered nurse" or "professional nurse" means a person who practices registered nursing and who holds a registered nurse license issued pursuant to this chapter or pursuant to a multistate compact privilege.

22. "Registered nurse practitioner" means a registered nurse who:

(a) Is certified by the board.

(b) Has completed a nurse practitioner education program approved or recognized by the board and educational requirements prescribed by the board by rule.

(c) If applying for certification after July 1, 2004, holds national certification as a nurse practitioner from a national certifying body recognized by the board.

(d) Has an expanded scope of practice within a specialty area that includes:

(i) Assessing clients, synthesizing and analyzing data and understanding and applying principles of health care at an advanced level.

(ii) Managing the physical and psychosocial health status of patients.

(iii) Analyzing multiple sources of data, identifying alternative possibilities as to the nature of a health care problem and selecting, implementing and evaluating appropriate treatment.

(iv) Making independent decisions in solving complex patient care problems.

(v) Diagnosing, performing diagnostic and therapeutic procedures, and prescribing, administering and dispensing therapeutic measures, including legend drugs, medical devices and controlled substances within the scope of registered nurse practitioner practice on meeting the requirements established by the board.

(vi) Recognizing the limits of the nurse's knowledge and experience by consulting with or referring patients to other appropriate health care professionals if a situation or condition occurs that is beyond the knowledge and experience of the nurse or if the referral will protect the health and welfare of the patient.

(vii) Delegating to a medical assistant pursuant to section 32-1456.

(viii) Performing additional acts that require education and training as prescribed by the board and that are recognized by the nursing profession as proper to be performed by a nurse practitioner.

23. "Registered nursing" includes the following:

(a) Diagnosing and treating human responses to actual or potential health problems.

(b) Assisting individuals and groups to maintain or attain optimal health by implementing a strategy of care to accomplish defined goals and evaluating responses to care and treatment.

(c) Assessing the health status of individuals and groups.

(d) Establishing a nursing diagnosis.

(e) Establishing goals to meet identified health care needs.

(f) Prescribing nursing interventions to implement a strategy of care.

(g) Delegating nursing interventions to others who are qualified to do so.

- (h) Providing for the maintenance of safe and effective nursing care that is rendered directly or indirectly.
 - (i) Evaluating responses to interventions.
 - (j) Teaching nursing knowledge and skills.
 - (k) Managing and supervising the practice of nursing.
 - (l) Consulting and coordinating with other health care professionals in the management of health care.
 - (m) Performing additional acts that require education and training as prescribed by the board and that are recognized by the nursing profession as proper to be performed by a registered nurse.
24. "Registry of nursing assistants" means the nursing assistants registry maintained by the board pursuant to the omnibus budget reconciliation act of 1987 (P.L. 100-203; 101 Stat. 1330), as amended by the medicare catastrophic coverage act of 1988 (P.L. 100-360; 102 Stat. 683).
25. "Regulated party" means any person or entity that is licensed, certified, registered, recognized or approved pursuant to this chapter.
26. "Unprofessional conduct" includes the following, whether occurring in this state or elsewhere:
- (a) Committing fraud or deceit in obtaining, attempting to obtain or renewing a license or a certificate issued pursuant to this chapter.
 - (b) Committing a felony, whether or not involving moral turpitude, or a misdemeanor involving moral turpitude. In either case, conviction by a court of competent jurisdiction or a plea of no contest is conclusive evidence of the commission.
 - (c) Aiding or abetting in a criminal abortion or attempting, agreeing or offering to procure or assist in a criminal abortion.
 - (d) Any conduct or practice that is or might be harmful or dangerous to the health of a patient or the public.
 - (e) Being mentally incompetent or physically unsafe to a degree that is or might be harmful or dangerous to the health of a patient or the public.
 - (f) Having a license, certificate, permit or registration to practice a health care profession denied, suspended, conditioned, limited or revoked in another jurisdiction and not reinstated by that jurisdiction.
 - (g) Wilfully or repeatedly violating a provision of this chapter or a rule adopted pursuant to this chapter.
 - (h) Committing an act that deceives, defrauds or harms the public.
 - (i) Failing to comply with a stipulated agreement, consent agreement or board order.
 - (j) Violating this chapter or a rule that is adopted by the board pursuant to this chapter.
 - (k) Failing to report to the board any evidence that a registered or practical nurse or a nursing assistant is or may be:
 - (i) Incompetent to practice.
 - (ii) Guilty of unprofessional conduct.
 - (iii) Mentally or physically unable to safely practice nursing or to perform nursing-related duties. A nurse who is providing therapeutic counseling for a nurse who is in a drug rehabilitation program is required to report that nurse only if the nurse providing therapeutic counseling has personal knowledge that patient safety is being jeopardized.
 - (l) Failing to self-report a conviction for a felony or undesignated offense within ten days after the conviction.
 - (m) Cheating or assisting another to cheat on a licensure or certification examination.

A.R.S. § 36-2021. Definitions

In this chapter, unless the context otherwise requires:

1. “Administration” means the Arizona health care cost containment system administration.
2. “Alcoholic” means a person who habitually lacks self-control with respect to the use of alcoholic beverages or who uses alcoholic beverages to the extent that the person’s health is substantially impaired or endangered or social or economic functions are substantially disrupted.
3. “Approved private treatment facility” means a private agency meeting the standards established by the department and approved pursuant to sections 36-2023 and 36-2029.
4. “Approved public treatment facility” means a treatment agency operating under the directions and control of a county, providing treatment through a contract with a county, meeting the standards established by the department and approved pursuant to sections 36-2023 and 36-2029.
5. “Chronic alcoholic” means an alcoholic who is incapacitated by alcohol and who during the preceding twelve months has been admitted to a local alcoholism reception center on ten or more occasions or has been admitted for three or more episodes of inpatient or residential alcoholism treatment.
6. “Court” means the supreme court, the court of appeals, a superior court, a justice of the peace court, a municipal court or a city court authorized by charter.
7. “Department” means the department of health services.
8. “Director” means the director of the administration.
9. “Evaluation” means a multidisciplinary professional analysis of a person’s medical, psychological, social, financial and legal conditions. Persons providing evaluation services shall be properly qualified professionals and may be full-time employees of an approved treatment facility providing evaluation services or may be part-time employees or may be employed on a contractual basis.
10. “Incapacitated by alcohol” means that a person as a result of the use of alcohol is unconscious or has judgment otherwise so impaired that the person is incapable of realizing and making a rational decision with respect to the person’s need for evaluation and treatment, is unable to take care of basic personal needs or safety such as food, clothing, shelter or medical care or lacks sufficient understanding or capacity to make or communicate rational decisions.
11. “Intoxicated person” means a person whose mental or physical functioning is substantially impaired as a result of the immediate effects of alcohol in the person’s system.
12. “Local alcoholism reception center” or “center” means an initial reception agency for a person who is intoxicated or who is incapacitated by alcohol to receive initial evaluation and processing for assignment for further evaluation or into a treatment program.
13. “Treatment” means the broad range of emergency, outpatient, intermediate and inpatient services and care, including diagnostic evaluation, medical, psychiatric, psychological and social service care, vocational rehabilitation and career counseling, which may be extended to alcoholics and intoxicated persons.

A.R.S. § 36-2501. Definitions

A. In this chapter, unless the context otherwise requires:

1. "Board" means the Arizona state board of pharmacy.
2. "Cannabis" means the following substances under whatever names they may be designated:
 - (a) Marijuana.
 - (b) All parts of any plant of the genus cannabis, whether growing or not, its seeds, the resin extracted from any part of such plant, and every compound, manufacture, salt, derivative, mixture or preparation of such plant, its seeds or resin, but shall not include the mature stalks of such plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture or preparation of such mature stalks (except the resin extracted therefrom), fiber, oil, or cake or the sterilized seed of such plant which is incapable of germination.
 - (c) Every compound, manufacture, salt, derivative, mixture or preparation of such resin, tetrahydrocannabinol (T.H.C.), or of such plants from which the resin has not been extracted.
3. "Controlled substance" means a drug, substance or immediate precursor in schedules I through V of article 2 of this chapter.
4. "Department" means the department of public safety.
5. "Drug dependent person" means a person who is using a controlled substance and who is in a state of psychic or physical dependence, or both, arising from the use of that substance on a continuous basis. Drug dependence is characterized by behavioral and other responses which include a strong compulsion to take the substance on a continuing basis in order to experience its psychic effects or to avoid the discomfort caused by its absence.
6. "Drug enforcement administration" means the drug enforcement administration of the department of justice of the United States or its successor agency.
7. "Immediate precursor" means a substance which the board has found to be and by rule designates as being the principal compound commonly used or produced primarily for use and which is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance, the control of which is necessary to prevent, curtail or limit manufacture.
8. "Narcotic drug" means any of the following whether produced directly or indirectly by extraction from substances of vegetable origin or independently by means of chemical synthesis or by a combination of extraction and chemical synthesis:
 - (a) Opium and opiate and any salt, compound, derivation or preparation of opium or opiate.
 - (b) Any salt, compound, isomer, derivative or preparation which is chemically equivalent or identical with any of the substances referred to in subdivision (a) of this paragraph but not including the isoquinoline alkaloids of opium.
 - (c) Opium poppy and poppy straw.
 - (d) Coca leaves and any salt, compound, derivation or preparation of coca leaves including cocaine and its optical isomers and any salt, compound, isomer, derivation or preparation which is chemically equivalent or identical with any of these substances but not including decocainized coca leaves or extractions of coca leaves which do not contain cocaine or ecgonine.

(e) Cannabis.

9. “Opiate” means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. It does not include the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). It does include its racemic and levorotatory forms.

10. “Opium poppy” means the plant of the genus papaver, except its seeds.

11. “Poppy straw” means all parts, except the seeds, of the opium poppy after mowing.

12. “Production” means the manufacture, planting, cultivating, growing or harvesting of a controlled substance.

13. “Registrant” means a person registered under the provisions of the federal controlled substances act (P.L. 91-513; 84 Stat. 1242; 21 U.S.C. sec. 801 et seq.).

14. “Schedule I controlled substances” means the controlled substances identified, defined or listed in section 36-2512.

15. “Schedule II controlled substances” means the controlled substances identified, defined or listed in section 36-2513.

16. “Schedule III controlled substances” means the controlled substances identified, defined or listed in section 36-2514.

17. “Schedule IV controlled substances” means the controlled substances identified, defined or listed in section 36-2515.

18. “Schedule V controlled substances” means the controlled substances identified, defined or listed in section 36-2516.

19. “Scientific purpose” means research, teaching or chemical analysis.

20. “State”, when applied to a part of the United States, means any state, district, commonwealth, territory or insular possession of the United States and any area subject to the legal authority of the United States of America.

B. Words or phrases in this chapter, if not defined in subsection A of this section, have the definitions given them in title 32, chapter 18, article 1, unless the context otherwise requires.

Additional terms are found in the incorporated material [49 CFR 1572](#), revised as of October 1, 2020.

NOTICE OF FINAL RULEMAKING
TITLE 17. TRANSPORTATION
CHAPTER 4. DEPARTMENT OF TRANSPORTATION
TITLE, REGISTRATION, AND DRIVER LICENSES

Material Incorporated by Reference

R17-4-702. Scope

In this Section, the Department incorporates by reference, [49 CFR 1572](#), revised as of October 1, 2020.

BOARD OF DISPENSING OPTICIANS

Title 4, Chapter 20, Board of Dispensing Opticians

Amend: R4-20-102, R4-20-107, R4-20-110, R4-20-112



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - REGULAR RULEMAKING

MEETING DATE: November 2, 2021

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

FROM: Council Staff

DATE: October 14, 2021

SUBJECT: BOARD OF DISPENSING OPTICIANS
Title 4, Chapter 20, Board of Dispensing Opticians, Article 1, General

Amend: R4-20-102, R4-20-107, R4-20-110, R4-20-112

Summary:

This regular rulemaking from the Board of Dispensing Opticians (Board) seeks to amend rules in Title 4, Chapter 20, Article 1 relating to the Board. Specifically, the Board seeks to amend R4-20-102 (Application for a Dispensing Optician's License by Examination), R4-20-107 (Application for a Dispensing Optician's License by Comity), and R4-20-110 (Application for an Optical Establishment License) to clarify the materials an applicant needs to submit when applying for licensure. The Board seeks to amend R4-20-112 (Fees) to remove fees for copies of public records.

The Board is requesting an immediate effective date for this rulemaking pursuant to A.R.S. § 41-1032(A)(5) ("[t]o 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").

The Board received an exception from Executive Order 2021-02 to proceed with a rulemaking on June 28, 2021 and final approval to submit the rulemaking to the Council on September 2, 2021.

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

Yes. The Board cites both general and specific statutory authority for these rules. The applicable statutory authority can be found at: <https://www.azleg.gov/arsDetail/?title=32>.

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

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

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

Not applicable. The Board did not review or rely on a study in conducting this rulemaking.

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

The Board analyzed the economic impact of the rules on the Board, applicants for licensure, opticians, and consumers of dispensing optician services. The Board expects administrative costs to be none to minimal, requiring only knowledge of the proposed changes. The impact on state revenues is expected to be minimal to none. No other economic impacts are apparent.

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

The Board states that the rules impose the least burden and costs to those who are regulated. No apparent alternatives are identified.

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

The Board expects the economic impacts on administrative costs and state revenues to be minimal to none. No other stakeholders are expected to be impacted.

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

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

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

The Board did not receive any public comments on this rulemaking.

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

No. The rules do not require a permit, license, or agency authorization.

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

Not applicable. There is no corresponding federal law to these rules.

11. **Conclusion**

In this regular rulemaking, the Board seeks to amend four rules to clarify the requirements for what must be submitted with an application for licensure, and to remove fees for copies of public records. Council staff notes that this rulemaking will result in a decreased regulatory burden. The Board is seeking an immediate effective date for this rulemaking pursuant to A.R.S. § 41-1032(A)(5) (“[t]o 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”). Council staff finds that the Board demonstrates adequate justification for an immediate effective date. Council staff recommends approval of this rulemaking.



Douglas A. Ducey
Governor

Dale Nyblade
Chairman

ARIZONA STATE BOARD OF DISPENSING OPTICIANS

Suzanne Coleman
Vice-Chairman

1740 W. Adams, Suite, 3001
PHOENIX, ARIZONA 85007
Phone (602) 542-8158 FAX (602) 926-8103

Megan Darian
Executive Director

September 7, 2021

Nicole Sornsin Chairperson
Governor's Regulatory Review Council
Arizona Department of Administration
100 N. 15th Ave., St. 402
Phoenix, AZ 85007

Re: Rulemaking – Arizona Dispensing Opticians Board

This will serve as the close of record date is September 7, 2021, for the proposed administrative rule changes: R4-20-102, R4-20-107, R4-20-110, and R4-20-120.

The definitions or terms contained in statutes or other rules and used in the rule are attached. The rulemaking does relate to a five-year review report, as required under GRRC rule R1-6-201(A)(1)(b).

The rule does not establish a new fee. The amended rule does not contain a fee increase. An immediate effective date is requested. The agency has not reviewed any study relevant to this rule.

Items enclosed include:

1. Notice of Final Rulemaking
2. Economic, small business and consumer impact statement
3. Copy of the existing rule

Megan Darian

A handwritten signature in black ink that reads "M. Darian".

Executive Director

NOTICE OF FINAL RULEMAKING
TITLE 4. PROFESSIONS AND OCCUPATIONS
CHAPTER 20. BOARD OF DISPENSING OPTICIANS

PREAMBLE

1. Article, Part, or Section Affected (as applicable) _____ Rulemaking Action
R4-20-102, R4-20-107, R4-20-110, R4-20-112 Amend

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

Authorizing statute: A.R.S. §32-1673

Implementing statute: A.R.S. §32-1671, 32-1672, 32-1673, 32-1674, 32-1681, 32-1682, 32-1683, 32-1684, 32-1684.01, 32-1685, 32-1686, 32-1687, 32-1691, 32-1691.01, 32-1693, 32-1694, 32-1695, 32-1695, 32-1696, 32-1697, 32-1698, 32-1699

3. The effective date of the rule:

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

Immediate.

This rule making qualifies for an immediate effective date pursuant to § 41-1032(A)(5).

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

Not applicable

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

Notice of Rulemaking Docket Opening Register Vol. 27, Issue 29 on July 16, 2021.

Notice of Proposed Rulemaking Vol. 27, Issue 30 on July 23, 2021.

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

Name: Megan Darian, Executive Director

Address: 1740 W. Adams, Suite 3001
Phoenix, AZ 85007

Telephone: 602-542-8158

Fax: 602-926-8103

E-mail: mdarian@do.az.gov

Web site: www. do.az.gov

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

The rule provides detailed licensing, regulatory information, and procedural instructions. The Board is proposing to amend rules R4-20-102, R4-20-107, R4-20-110 for clarification on the material necessary to submit with the application for licensure. The board is proposing to amend rule R4-20-112 to remove fees for copies of public record, due to the availability of the information online.

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:

The proposed amendment do not diminish a previous grant of authority of a political subdivision of this state.

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

Amending this rule would not have any adverse economic impact on consumers and small businesses.

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

None

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

The Board held an oral proceeding on the proposed rule at 1740 W. Adams, Phoenix, AZ on Monday August 23, 2021. The Board received no public comment against the rule changes.

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:

Not applicable

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

Not applicable

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

Not applicable

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

No

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

Not applicable

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

Not Applicable

15. The full text of the rules follows:

**TITLE 4. PROFESSIONS AND OCCUPATIONS
CHAPTER 20. BOARD OF DISPENSING OPTICIANS**

ARTICLE 1. GENERAL

- R4-20-102. Application for a Dispensing Optician's License by Examination
- R4-20-107. Application for a Dispensing Optician's License by Comity
- R4-20-110. Application for an Optical Establishment License
- R4-20-112. Fees

ARTICLE 1. GENERAL

R4-20-102. Application for a Dispensing Optician's License by Examination

At least 30 days before a regularly scheduled board meeting date, an applicant for a dispensing optician's license by examination shall submit to the Board an application packet that contains:

1. An application form provided by the Board, signed and dated by the applicant, that contains:
 - a. The applicant's name, Social Security number, address, and telephone number;
 - b. The name and address of the applicant's employer at the time of application, if applicable;
 - c. If demonstrating technical skill and training under A.R.S. § 32-1683(5)(b), the name and address of each dispensing optician, physician, or optometrist for whom the applicant served as an apprentice for three of the six years immediately preceding the application date, and the beginning and ending dates of each apprenticeship;
 - d. If demonstrating technical skill and training under A.R.S. § 32-1683(5) (c), the name and address of the school from which the applicant graduated, dates of attendance, date of graduation, degree received, and the name and address of each dispensing optician for whom the applicant served as a dispensing optician apprentice for one of the six years immediately preceding the application date and the beginning and ending dates of service. The applicant shall submit a photocopy of the applicant's diploma from the optical dispensing school;
 - e. If demonstrating technical skill and training under A.R.S. § 32-1683(5) (c) received during military service, the name and address of the school from which the applicant graduated, dates of

- attendance, date of graduation, and degree received, the location and name of the duty station at which the applicant has worked for three of the six years immediately preceding the application date and the beginning and ending dates of service.
- f. If demonstrating technical skill and training under A.R.S. § 32-1683(5)(d), the name and address of each dispensing optician, physician, or optometrist for whom the applicant has worked for three of the six years immediately preceding the application date and the beginning and ending dates of employment;
 - g. A statement of whether the applicant has ever been convicted of a felony or of a misdemeanor involving moral turpitude in any state;
 - h. A statement of whether the applicant has ever had an application for a professional license denied or had a license suspended or revoked in any state; and
 - i. A sworn statement by the applicant verifying the truthfulness of the information provided by the applicant;
2. A photocopy of the applicant's:
 - a. High school diploma or general educational diploma issued in any state; or
 - b. Transcripts from a high school or college; or,
 - c. Evidence of a college degree or admission to any college in any state;
 3. Verification of passing both spectacle and contact lens written and practical examinations in opticianry administered by a nationally recognized body as evidenced by an original notice of examination results or a copy of the original certificate of passage issued by the organization that prepared the examination;
 4. A letter attesting to good moral character from each of three individuals who are not family members, who have known the applicant for two years immediately before the date of the application, and support the applicant's licensure;
 5. A letter from each physician, optometrist, or dispensing optician named in subsection (1) (c), (d), or (e) that contains:
 - a. The individual's printed name, address, and telephone number; and
 - b. A statement that the applicant has either served as an apprentice or been employed as a dispensing optician by the physician, optometrist, or dispensing optician for the time required in subsection (1) (c), (d), or (e);
 6. A photograph of the applicant ~~no smaller than 1 1/2 x 2 inches and~~ taken not more than six months before the date of application; and
 7. The fee required in R4-20-112.

R4-20-107. Application for a Dispensing Optician's License by Comity

An applicant for a dispensing optician's license by comity shall submit an application packet to the Board that contains:

1. An application form provided by the Board, signed and dated by the applicant that contains:
 - a. The applicant's name, Social Security number, address, and telephone number;
 - b. The applicant's dispensing optician license number and the state and date of licensure;
 - c. A statement of whether the applicant has ever been convicted of a felony or of a misdemeanor involving moral turpitude in any state;
 - d. A statement of whether the applicant has ever been denied a license or had a license suspended or revoked in any state; and
 - e. A sworn statement by the applicant verifying the truthfulness of the information provided by the applicant;
2. A photocopy of the unexpired license and a written statement, signed by an officer of the Board that issued the license, that states the license is in good standing, and that the license is valid to dispense both eyeglasses and contact lenses;
3. A photograph of the applicant ~~no smaller than 1 1/2 x 2 inches and~~ taken not more than six months before the date of application; and
4. The fee required in R4-20-112.

R4-20-110. Application for an Optical Establishment License

- A. Any person, corporation, company, partnership, firm, association or society operating an optical establishment, except those exempt under A.R.S. §32-1691, shall obtain an optical establishment license.
- B. An applicant for an optical establishment license shall submit an application packet to the Board that contains:
 1. An application form provided by the Board, signed and dated by the applicant, that contains:
 - a. The applicant's name, establishment name, establishment address, and telephone number. ~~An application form shall be signed by the following:~~

- i. ~~If a sole proprietorship, the individual owning the optical establishment;~~
 - ii. ~~If a corporation, each individual owning 20% or more of the voting stock in the corporation;~~
 - iii. ~~If a partnership, the managing partner and a general partner;~~
 - iv. ~~If a limited liability company, the designated manager, or if no manager is designated, any two members of the limited liability company;~~
 - b. The hours the establishment will be open to the public for business;
 - c. ~~If applicable, the name, business address, and telephone number of each licensed optical establishment currently being operated by the applicant in Arizona;~~
 - d. If a corporation, the name of the statutory agent, the corporation's officers, and the state of incorporation; and
 - e. The name, ~~business address, telephone number,~~ and license number of each licensed dispensing optician who is scheduled to work at the establishment on a full-time basis, consisting of 32 hours or more per week;
 - 2. If a corporation, the articles of incorporation; and
 - 3. The fee required in R4-20-112.
- C. To be licensed, an optical establishment shall employ at least one dispensing optician licensed by the Board, for at least 32 hours or more per week.

R4-20-112. Fees

A. Dispensing optician fees, which are non-refundable, unless A.R.S. §41-1077 applies, are as follows:

- 1. License issuance fee \$100
- 2. Renewal of dispensing optician license \$135
- 3. License renewal late fee \$100

B. Optical establishment license fees are as follows:

- 1. License application fee \$100
- 2. License issuance fee \$100
- 3. Renewal of optical establishment license \$135
- 4. License renewal late fee \$100

~~C. Fees for copies of public records are:~~

- ~~1. Duplicate optician license \$25~~
- ~~2. Duplicate establishment license \$25~~
- ~~3. Dispensing Optician Statutes and rules \$10~~
- ~~4. Directories:~~
 - ~~a. Commercial use \$2.50 per page~~
 - ~~b. Non-commercial use \$1.00 per page~~
- ~~5. Labels~~
 - ~~a. Commercial use \$.30 per name~~
 - ~~b. Non-commercial use \$.10 per name~~
- ~~6. All other records \$.50 per page~~

Chapter 20. Board of Dispensing Opticians

Economic, Small Business, And Consumer Impact Statement

1. Identification of the rulemaking

The Board is proposing to amend administrative rule changes R4-20-102, R4-20-107, R4-20-110, and R4-20-120, due to new database.

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

This economic, small business and consumer impact statement analyzes the costs, savings, and benefits that accrue to the Board, applicants for licensures, opticians, and consumers of dispensing optician services.

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

Name: Megan Darian

Address: 1740 W. Adams, Suite 3001
Phoenix, AZ 85007

Telephone: 602-542-8158

Fax: 602-926-8103

E-mail: mdarian@do.az.gov

4. Cost/benefit analysis

No impact

- a. **Probable cost/benefit to implementing agency and other agencies directly affected by implementation.**

Board of Dispensing Opticians

Rule	Description of Effect	Increased Cost Decreased Revenue	Decreased Cost Increased Revenue
R4-20-102	To remove the size of photograph on the License by Examination Application	None	No
R4-20-107	To remove the size of photograph on the License by Comity Application	None	None
R4-20-110	To remove the signature by the applicant's name, establishment name, establishment address and telephone number.	None	None
R4-20-112	To remove Fees for copies of public records	None	None
Total Annual Net Cost		None	None

b. Probable cost/benefit to a political subdivision of this state directly affected by implementation.

None apparent.

- c. **Probable cost/benefit to businesses directly affected by proposed rulemaking.**

None apparent.

- 5. **Probable impact on private and public employment in Businesses, agencies and political subdivisions directly affected by proposed rulemaking.**

None apparent.

- 6. **Impact on small businesses.**

- a. **An identification of the small businesses subject to the proposed rulemaking.**

None apparent.

- b. **The administrative and other costs required for compliance with proposed rulemaking.**

The administrative costs are none to minimal, requiring only knowledge of the proposed changes.

- c. **A description of the methods that the agency may use to reduce the impact on small businesses.**

None apparent.

- d. **Probable cost and benefit to private persons and consumers who are directly affected the proposed rulemaking.**

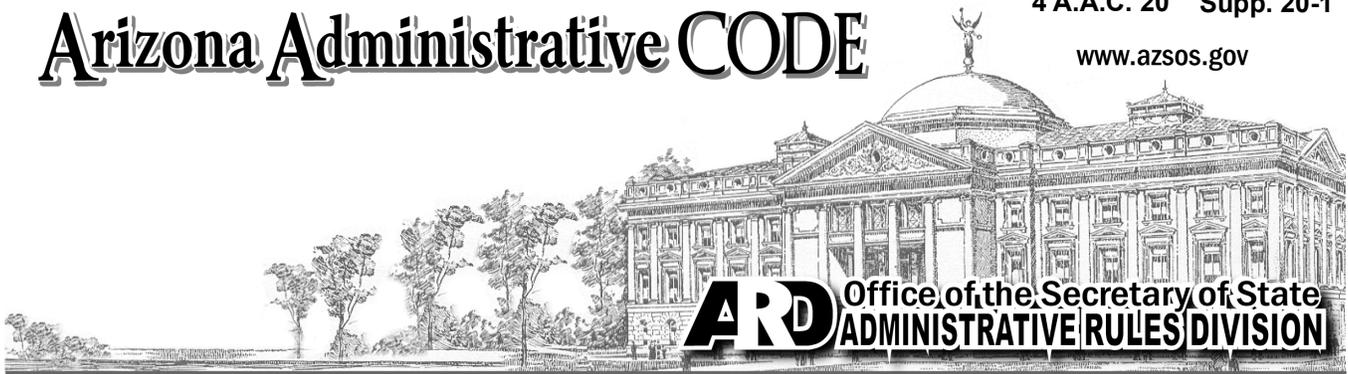
None apparent.

- 7. **A statement of the probable effect on state revenues.**

This rulemaking will have none to minimal effect on state revenues.

8. **A description of any less intrusive or less costly alternative methods achieving the purpose of the proposed rulemaking.**

None apparent.



TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 20. BOARD OF DISPENSING OPTICIANS

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

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

This Chapter contains rule Sections that were filed to be codified in the *Arizona Administrative Code* between the dates of January 1, 2020 through March 31, 2020.

[R4-20-120.](#) [Continuing Education: Hours Required: Reporting](#)
[..... 7](#)

Questions about these rules? Contact:

Name: Megan Darian, Executive Director
Address: Board of Dispensing Opticians
1740 W. Adams, Suite 3001
Phoenix, AZ 85007
Telephone: (602) 542-8158
Fax: (602) 926-8103
E-mail: mdarian@do.az.gov
Website: www.do.az.gov

The release of this Chapter in Supp. 20-1 replaces Supp. 18-4, 1-8 pages

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

PREFACE

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

Scott Cancelosi, Director
ADMINISTRATIVE RULES DIVISION

RULES

The definition for a rule is provided for under A.R.S. § 41-1001. “‘Rule’ means an agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedures or practice requirements of an agency.”

THE ADMINISTRATIVE CODE

The *Arizona Administrative Code* is where the official rules of the state of Arizona are published. The *Code* is the official codification of rules that govern state agencies, boards, and commissions.

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

Rules are codified quarterly in the *Code*. Supplement release dates are printed on the footers of each chapter.

First Quarter: January 1 - March 31

Second Quarter: April 1 - June 30

Third Quarter: July 1 - September 30

Fourth Quarter: October 1 - December 31

For example, the first supplement for the first quarter of 2019 is cited as Supp. 19-1.

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

AUTHENTICATION OF PDF CODE CHAPTERS

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

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

HOW TO USE THE CODE

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

ARIZONA REVISED STATUTE REFERENCES

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

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

SESSION LAW REFERENCES

Arizona Session Law references in a chapter can be found at the Secretary of State’s website, under Services-> Legislative Filings.

EXEMPTIONS FROM THE APA

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

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

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

Editor’s notes at the beginning of a chapter provide information about rulemaking sections made by exempt rulemaking. Exempt rulemaking notes are also included in the historical note at the end of a rulemaking Section.

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

EXEMPTIONS AND PAPER COLOR

At one time the office published exempt rules on either blue or green paper. Blue meant the authority of the exemption was given by the Legislature; green meant the authority was determined by a court order. In 2001 the Office discontinued publishing rules using these paper colors.

PERSONAL USE/COMMERCIAL USE

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

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



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

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 20. BOARD OF DISPENSING OPTICIANS

(Authority: A.R.S. § 32-1671 et seq.)

ARTICLE 1. GENERAL

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CHAPTER 20. BOARD OF DISPENSING OPTICIANS

ARTICLE 1. GENERAL

R4-20-101. Definitions

The following definitions apply in this Chapter unless otherwise specified:

1. "ABO" means the American Board of Opticianry.
2. "Applicant" means an individual requesting an initial or renewal license from the Board.
3. "Application packet" means the forms and additional information the Board requires to be submitted by an applicant or on the applicant's behalf.
4. "Comity" means the procedure for granting an Arizona license to an applicant who is already licensed as a dispensing optician in another state of the United States.
5. "Days" means calendar days.
6. "Laboratory experience" means work directly involved in the process of producing optical devices and does not include work that is strictly clerical.
7. "License" means a written authorization issued by the Board to practice as a dispensing optician or operate an optical establishment in Arizona.
8. "NCLE" means the National Contact Lens Examiners.
9. "Nationally recognized body on opticianry accreditation" means the Commission on Opticianry Accreditation.
10. "Optical devices" means eyeglasses, contact lenses, prosthetic eyes, low-vision aids, other eyewear, and eyewear appurtenances or parts.
11. "Optometrist" means a person currently licensed in any state of the United States in the practice of the profession of optometry as defined in A.R.S. § 32-1701.
12. "Physician" means a person currently licensed in any state of the United States to practice allopathic or osteopathic medicine.
13. "Work week" means the period of time beginning on Sunday at 12:00 a.m. and ending the following Saturday at 11:59 p.m.

Historical Note

Former Rule II. Amended effective December 14, 1979 (Supp. 79-6). Amended Subsections (A) and (D) effective April 2, 1981 (Supp. 81-2). Former Section R4-20-102 repealed, new Section R4-20-102 adopted effective October 24, 1983 (Supp. 83-5). Amended Subsection (B) effective August 29, 1985 (Supp. 85-4). Former Section R4-20-101 repealed, Section R4-20-102 amended and renumbered as Section R4-20-101 effective September 18, 1987 (Supp. 87-3). Amended by final rulemaking at 5 A.A.R. 418, effective January 15, 1999 (Supp. 99-1). Amended by final rulemaking at 6 A.A.R. 1978, effective May 10, 2000 (Supp. 00-2). Amended by final rulemaking at 11 A.A.R. 3660, effective November 15, 2005 (Supp. 05-3).

R4-20-102. Application for a Dispensing Optician's License by Examination

At least 30 days before a regularly scheduled board meeting date, an applicant for a dispensing optician's license by examination shall submit to the Board an application packet that contains:

1. An application form provided by the Board, signed and dated by the applicant, that contains:
 - a. The applicant's name, Social Security number, address, and telephone number;
 - b. The name and address of the applicant's employer at the time of application, if applicable;
 - c. If demonstrating technical skill and training under A.R.S. § 32-1683(5)(b), the name and address of each dispensing optician, physician, or optometrist for whom the applicant served as an apprentice for

three of the six years immediately preceding the application date, and the beginning and ending dates of each apprenticeship;

- d. If demonstrating technical skill and training under A.R.S. § 32-1683(5)(c), the name and address of the school from which the applicant graduated, dates of attendance, date of graduation, degree received, and the name and address of each dispensing optician for whom the applicant served as a dispensing optician apprentice for one of the six years immediately preceding the application date and the beginning and ending dates of service. The applicant shall submit a photocopy of the applicant's diploma from the optical dispensing school;
 - e. If demonstrating technical skill and training under A.R.S. § 32-1683(5)(c) received during military service, the name and address of the school from which the applicant graduated, dates of attendance, date of graduation, and degree received, the location and name of the duty station at which the applicant has worked for three of the six years immediately preceding the application date and the beginning and ending dates of service.
 - f. If demonstrating technical skill and training under A.R.S. § 32-1683(5)(d), the name and address of each dispensing optician, physician, or optometrist for whom the applicant has worked for three of the six years immediately preceding the application date and the beginning and ending dates of employment;
 - g. A statement of whether the applicant has ever been convicted of a felony or of a misdemeanor involving moral turpitude in any state;
 - h. A statement of whether the applicant has ever had an application for a professional license denied or had a license suspended or revoked in any state; and
 - i. A sworn statement by the applicant verifying the truthfulness of the information provided by the applicant;
2. A photocopy of the applicant's:
 - a. High school diploma or general educational diploma issued in any state; or
 - b. Transcripts from a high school or college; or,
 - c. Evidence of a college degree or admission to any college in any state;
 3. Verification of passing both spectacle and contact lens written and practical examinations in opticianry administered by a nationally recognized body as evidenced by an original notice of examination results or a copy of the original certificate of passage issued by the organization that prepared the examination;
 4. A letter attesting to good moral character from each of three individuals who are not family members, who have known the applicant for two years immediately before the date of the application, and support the applicant's licensure;
 5. A letter from each physician, optometrist, or dispensing optician named in subsection (1)(c), (d), or (e) that contains:
 - a. The individual's printed name, address, and telephone number; and
 - b. A statement that the applicant has either served as an apprentice or been employed as a dispensing optician by the physician, optometrist, or dispensing optician for the time required in subsection (1)(c), (d), or (e);

CHAPTER 20. BOARD OF DISPENSING OPTICIANS

6. A photograph of the applicant no smaller than 1 1/2 x 2 inches and taken not more than six months before the date of application; and
7. The fee required in R4-20-112.

Historical Note

Former Rule III. Amended effective August 9, 1977 (Supp. 77-4). Amended effective August 7, 1978 (Supp. 78-4). Amended effective December 14, 1979 (Supp. 79-6). Former Section R4-20-103 repealed, new Section R4-20-103 adopted effective October 24, 1983 (Supp. 83-5). Former Section R4-20-103 amended and renumbered as Section R4-20-102 effective September 18, 1987 (Supp. 87-3). Amended effective September 13, 1989 (Supp. 89-3). Section R4-20-102 repealed, new Section adopted by final rulemaking at 5 A.A.R. 423, effective January 15, 1999 (Supp. 99-1). Amended by final rulemaking at 11 A.A.R. 3660, effective November 15, 2005 (Supp. 05-3). Amended by final rulemaking at 19 A.A.R. 584, effective May 5, 2013 (Supp. 13-1). Amended by final rulemaking at 24 A.A.R. 3418, effective December 4, 2018 (Supp. 18-4).

R4-20-103. Repealed**Historical Note**

Adopted effective August 9, 1977 (Supp. 77-4). Amended effective December 14, 1979 (Supp. 79-6). Amended Subsection (E) effective April 2, 1981 (Supp. 81-2). Former Section R4-20-104 repealed, new Section R4-20-104 adopted effective October 24, 1983 (Supp. 83-5). Former Section R4-20-104 amended and renumbered as Section R4-20-103 effective September 18, 1987 (Supp. 87-3). Amended September 13, 1989 (Supp. 89-3). Amended by final rulemaking at 11 A.A.R. 3660, effective November 15, 2005 (Supp. 05-3). Repealed by final rulemaking at 24 A.A.R. 3418, effective December 4, 2018 (Supp. 18-4).

R4-20-104. Repealed**Historical Note**

Adopted effective August 9, 1977 (Supp. 77-4). Former Section R4-20-105 repealed, new Section R4-20-105 adopted effective October 24, 1983 (Supp. 83-5). Former Section R4-20-105 amended and renumbered as Section R4-20-104 effective September 18, 1987 (Supp. 87-3). Amended September 13, 1989 (Supp. 89-3). Amended effective July 22, 1994 (Supp. 94-3). Amended by final rulemaking at 6 A.A.R. 1978, effective May 10, 2000 (Supp. 00-2). Amended by final rulemaking at 11 A.A.R. 3660, effective November 15, 2005 (Supp. 05-3). Repealed by final rulemaking at 24 A.A.R. 3418, effective December 4, 2018 (Supp. 18-4).

R4-20-105. Repealed**Historical Note**

Adopted effective August 9, 1977 (Supp. 77-4). Former Section R4-20-106 repealed, new Section R4-20-106 adopted effective October 24, 1983 (Supp. 83-5). Former Section R4-20-106 amended and renumbered as Section R4-20-105 effective September 18, 1987 (Supp. 87-3). Amended effective September 13, 1989 (Supp. 89-3). Amended effective July 22, 1994 (Supp. 94-3). Amended by final rulemaking at 11 A.A.R. 3660, effective November 15, 2005 (Supp. 05-3). Repealed by final rulemaking at 24 A.A.R. 3418, effective December 4, 2018 (Supp. 18-4).

R4-20-106. Repealed**Historical Note**

Adopted effective March 20, 1978 (Supp. 78-2). Amended effective August 7, 1978 (Supp. 78-4). Former Section R4-20-107 repealed, new Section R4-20-107 adopted effective October 24, 1983 (Supp. 83-5). Former Section R4-20-107 amended and renumbered as Section R4-20-106 effective September 18, 1987 (Supp. 87-3). Amended effective September 13, 1989 (Supp. 89-3). Amended effective July 22, 1994 (Supp. 94-3). Amended by final rulemaking at 11 A.A.R. 3660, effective November 15, 2005 (Supp. 05-3). Repealed by final rulemaking at 24 A.A.R. 3418, effective December 4, 2018 (Supp. 18-4).

R4-20-107. Application for a Dispensing Optician's License by Comity

An applicant for a dispensing optician's license by comity shall submit an application packet to the Board that contains:

1. An application form provided by the Board, signed and dated by the applicant, that contains:
 - a. The applicant's name, Social Security number, address, and telephone number;
 - b. The applicant's dispensing optician license number and the state and date of licensure;
 - c. A statement of whether the applicant has ever been convicted of a felony or of a misdemeanor involving moral turpitude in any state;
 - d. A statement of whether the applicant has ever been denied a license or had a license suspended or revoked in any state; and
 - e. A sworn statement by the applicant verifying the truthfulness of the information provided by the applicant;
2. A photocopy of the unexpired license and a written statement, signed by an officer of the Board that issued the license, that states the license is in good standing, and that the license is valid to dispense both eyeglasses and contact lenses;
3. A photograph of the applicant no smaller than 1 1/2 x 2 inches and taken not more than six months before the date of application; and
4. The fee required in R4-20-112.

Historical Note

Adopted effective August 7, 1978 (Supp. 78-4). Former Section R4-20-108 repealed, new Section R4-20-108 adopted effective October 24, 1983 (Supp. 83-5). Former Section R4-20-108 amended and renumbered as Section R4-20-107 effective September 18, 1987 (Supp. 87-3). Amended effective September 13, 1989 (Supp. 89-3). Section R4-20-107 repealed, new Section adopted by final rulemaking at 5 A.A.R. 423, effective January 15, 1999 (Supp. 99-1). Amended by final rulemaking at 11 A.A.R. 3660, effective November 15, 2005 (Supp. 05-3). Amended by final rulemaking at 24 A.A.R. 3418, effective December 4, 2018 (Supp. 18-4).

R4-20-108. Repealed**Historical Note**

Adopted effective October 24, 1983 (Supp. 83-5). Former Section R4-20-109 amended and renumbered as Section R4-20-108 effective September 18, 1987 (Supp. 87-3). Amended effective September 13, 1989 (Supp. 89-3). Section R4-20-108 repealed by final rulemaking at 5 A.A.R. 423, effective January 15, 1999 (Supp. 99-1).

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R4-20-109. Renewal of Dispensing Optician's License; Late Renewal; Reinstatement

- A. No later than December 31 of each year, an applicant for renewal of a dispensing optician's license shall submit to the Board the fee required by R4-20-112, proof of continuing education credits required by R4-20-120, and an application form, provided by the Board, signed and dated by the applicant, that contains:
1. The applicant's name, Social Security number, address, and telephone number;
 2. The name, address, telephone number, and Arizona license number of the optical establishment at which the applicant is currently practicing as a dispensing optician; and
 3. A statement that the information contained on the renewal application is correct.
- B. A licensee who submits a renewal application and renewal fee after December 31 but before January 31 of the following year shall pay the late fee in R4-20-112.
- C. A licensee who fails to submit a renewal application before January 31 following a license expiration of December 31, and who wishes to reinstate the license, shall:
1. Submit a reinstatement application within one year of license expiration;
 2. Pay the renewal fee and the late fee in R4-20-112;
 3. Achieve a passing grade on the practical examination, unless the applicant has successfully completed the practical examination in the five-year period immediately preceding the license expiration.

Historical Note

Adopted effective April 2, 1981 (Supp. 81-2). Former Section R4-20-110 repealed, new Section R4-20-110 adopted effective October 24, 1983 (Supp. 83-5). Former Section R4-20-110 amended and renumbered as Section R4-20-109 effective September 18, 1987 (Supp. 87-3). Section R4-20-109 repealed, new Section adopted by final rulemaking at 5 A.A.R. 423, effective January 15, 1999 (Supp. 99-1). Amended by final rulemaking at 11 A.A.R. 3660, effective November 15, 2005 (Supp. 05-3). Amended by final rulemaking at 19 A.A.R. 584, effective May 5, 2013 (Supp. 13-1). Amended by final rulemaking at 24 A.A.R. 3418, effective December 4, 2018 (Supp. 18-4).

R4-20-110. Application for an Optical Establishment License; Qualifications

- A. Any person, corporation, company, partnership, firm, association or society operating an optical establishment, except those exempt under A.R.S. § 32-1691, shall obtain an optical establishment license.
- B. An applicant for an optical establishment license shall submit an application packet to the Board that contains:
1. An application form provided by the Board, signed and dated by the applicant, that contains:
 - a. The applicant's name, establishment name, establishment address, and telephone number. An application form shall be signed by the following:
 - i. If a sole proprietorship, the individual owning the optical establishment;
 - ii. If a corporation, each individual owning 20% or more of the voting stock in the corporation;
 - iii. If a partnership, the managing partner and a general partner;
 - iv. If a limited liability company, the designated manager, or if no manager is designated, any two members of the limited liability company;

- b. The hours the establishment will be open to the public for business;
 - c. If applicable, the name, business address, and telephone number of each licensed optical establishment currently being operated by the applicant in Arizona;
 - d. If a corporation, the name of the statutory agent, the corporation's officers, and the state of incorporation; and
 - e. The name, business address, telephone number, and license number of each licensed dispensing optician who is scheduled to work at the establishment on a full-time basis, consisting of 32 hours or more per week;
2. If a corporation, the articles of incorporation; and
 3. The fee required in R4-20-112.
- C. To be licensed, an optical establishment shall employ at least one dispensing optician licensed by the Board, for at least 32 hours or more per week.

Historical Note

Adopted effective October 24, 1983 (Supp. 83-5). Former Section R4-20-111 amended and renumbered as Section R4-20-110 effective September 18, 1987 (Supp. 87-3). Repealed effective September 13, 1989 (Supp. 89-3). New Section R4-20-110 adopted by final rulemaking at 5 A.A.R. 423, effective January 15, 1999 (Supp. 99-1). Amended by final rulemaking at 11 A.A.R. 3660, effective November 15, 2005 (Supp. 05-3). Amended by final rulemaking at 14 A.A.R. 3668, effective November 8, 2008 (Supp. 08-3). Amended by final rulemaking at 24 A.A.R. 3418, effective December 4, 2018 (Supp. 18-4). Amended by final rulemaking at 24 A.A.R. 3418, effective December 4, 2018 (Supp. 18-4).

R4-20-111. Time-frames for License Approvals

- A. The overall time-frame described in A.R.S. § 41-1072(2) for each type of approval granted by the Board is set forth in Table 1. The applicant and the Executive Director of the Board may agree in writing to extend the substantive review and overall time-frame. The substantive review time-frame may not be extended by more than 25% of the overall time-frame.
- B. The administrative completeness review time-frame described in A.R.S. § 41-1072(1) for each type of approval granted by the Board is set forth in Table 1.
1. The administrative completeness review time-frame begins:
 - a. For approval to take a dispensing optician examination or for an optical establishment license, when the Board receives an application packet.
 - b. For approval or denial of a license by examination when the applicant takes the dispensing optician examination.
 - c. For a license by comity, when the Board receives an application packet.
 2. If the application packet is incomplete, the Board shall send to the applicant a written notice specifying the missing document or incomplete information. The administrative completeness review time-frame and the overall time-frame are suspended from the postmark date of the notice until the date the Board receives a complete application packet from the applicant.
 3. If an application packet is complete, the Board shall send a written notice of administrative completeness to the applicant.
 4. If the Board grants a license or approval during the time provided to assess administrative completeness, the

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Board shall not issue a separate written notice of administrative completeness.

- C. The substantive review time-frame described in A.R.S. § 41-1072(3) is set forth in Table 1 and begins on the postmark date of the notice of administrative completeness.
1. During the substantive review time-frame, the Board may make one comprehensive written request for additional information or documentation. The time-frame for the Board to complete the substantive review is suspended from the postmark date of the comprehensive written request for additional information or documentation until the Board receives the additional information or documentation.
 2. The Board shall send a written notice approving the applicant to take an examination or granting a license to an applicant who meets the qualifications in A.R.S. §§ 32-1681 through 32-1684 and 32-1687.
 3. The Board shall send a written notice of denial to an applicant who fails to meet the qualifications in A.R.S. §§ 32-1681 through 32-1684 and 32-1687.
- D. The Board shall consider an application withdrawn if within 360 days from the application submission date the applicant fails to:
1. Supply the missing information under subsection (B)(2) or (C)(1); or
 2. Take the dispensing optician examination.
- E. An applicant who does not want an application withdrawn may request a denial in writing within 360 days from the application submission date.
- F. If a time-frame's last day falls on a Saturday, Sunday, or an official state holiday, the next business day shall be considered the time-frame's last day.

Historical Note

Adopted effective October 24, 1983 (Supp. 83-5). Former Section R4-20-112 amended and renumbered as Section R4-20-111 effective September 18, 1987 (Supp. 87-3). Amended effective September 13, 1989 (Supp. 89-3). Section R4-20-111 repealed, new Section adopted by final rulemaking at 5 A.A.R. 423, effective January 15, 1999 (Supp. 99-1). Amended by final rulemaking at 11 A.A.R. 3660, effective November 15, 2005 (Supp. 05-3).

R4-20-112. Fees

- A. Dispensing optician fees, which are non-refundable unless A.R.S. § 41-1077 applies, are as follows:
1. License issuance fee: \$100
 2. Renewal of dispensing optician license: \$135
 3. License renewal late fee: \$100
- B. Optical establishment license fees are as follows:
1. License application fee: \$100
 2. License issuance fee: \$100
 3. Renewal of optical establishment license: \$135
 4. License renewal late fee: \$100
- C. Fees for copies of public records are:
1. Duplicate optician license: \$25
 2. Duplicate establishment license: \$25
 3. Dispensing Optician Statutes and rules: \$10
 4. Directories:
 - a. Commercial use: \$2.50 per page
 - b. Non-commercial use: \$1.00 per page
 5. Labels:
 - a. Commercial use: \$.30 per name
 - b. Non-commercial use: \$.10 per name
 6. All other records: \$.50 per page

Historical Note

Adopted effective October 24, 1983 (Supp. 83-5). Former Section R4-20-113 amended and renumbered as Section R4-20-112 effective September 18, 1987 (Supp. 87-3). Amended effective April 22, 1988 (Supp. 88-2). Amended effective May 26, 1989 (Supp. 89-2). Amended by final rulemaking at 6 A.A.R. 1978, effective May 10, 2000 (Supp. 00-2). Amended by final rulemaking at 11 A.A.R. 3163 effective August 3, 2005; amended by final rulemaking at 11 A.A.R. 3660, effective November 15, 2005 (Supp. 05-3). Amended by final rulemaking at 24 A.A.R. 3418, effective December 4, 2018 (Supp. 18-4).

R4-20-113. Display of Licenses; Non-transferability

- A. A licensee shall display all licenses in a conspicuous place. If a license is renewed, the licensee shall display the evidence of renewal in public view.
- B. Optical establishment and dispensing optician licenses are not transferable.
- C. A licensee shall return an optical establishment license to the Board upon transfer of ownership or going out of business.

Historical Note

Adopted effective October 24, 1983 (Supp. 83-5). Former Section R4-20-114 amended and renumbered as Section R4-20-113 effective September 18, 1987 (Supp. 87-3). Amended effective September 13, 1989 (Supp. 89-3). Amended by final rulemaking at 11 A.A.R. 3660, effective November 15, 2005 (Supp. 05-3). Amended by final rulemaking at 24 A.A.R. 3418, effective December 4, 2018 (Supp. 18-4).

R4-20-114. Notice of Change of Status

- A. An optical establishment licensee and dispensing optician licensee shall notify the Board of any change in the information provided to the Board concerning license application or its renewal, including any change in name, address, work location, establishment ownership or the name, address or home telephone number of each dispensing optician working at the establishment.
- B. This notice shall be in writing and made within 30 days of change of status.
- C. For purposes of this Section, a change of establishment ownership means:
1. The transfer of a controlling interest in the optical establishment business from one person to another;
 2. The addition or termination of a general partner; or
 3. The transfer or agreement to transfer a block of 20% or more of the outstanding voting stock of a corporation or association or the transfer or agreement to transfer any amount of voting stock that would give the transferee control of a majority of outstanding voting stock. For purposes of this subsection, "voting stock" means any interest or system whereby the operation of a corporation is controlled by its owners or trustees.

Historical Note

Adopted effective October 24, 1983 (Supp. 83-5). Former Section R4-20-115 amended and renumbered as Section R4-20-114 effective September 18, 1987 (Supp. 87-3). Amended effective September 13, 1989 (Supp. 89-3). Amended by final rulemaking at 11 A.A.R. 3660, effective November 15, 2005 (Supp. 05-3).

R4-20-115. Renewal of Optical Establishment License; Late Renewal; Re-application

- A. No later than June 30 of each year, an applicant for renewal of an optical establishment license shall submit to the Board the

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fee required by R4-20-112 and an application form, provided by the Board that contains:

1. The name, address, and telephone number of the optical establishment;
 2. The name and license number of each dispensing optician who is scheduled to work 32 hours or more each week at the optical establishment; and
 3. The applicant's signature and title.
- B.** A licensee who submits a renewal application and renewal fee after June 30 but before July 31 of the renewal year shall pay the late fee in R4-20-112.
- C.** A licensee who fails to submit a renewal application before July 31 following a license expiration of June 30, and who wishes to re-apply for an establishment license, shall submit an original application, and pay the application fee and license fee in R4-20-112.

Historical Note

Adopted effective October 24, 1983 (Supp. 83-5). Former Section R4-20-116 repealed and reserved as Section R4-20-115 effective September 18, 1987 (Supp. 87-3). Section R4-20-115 amended by final rulemaking at 5 A.A.R. 423, effective January 15, 1999 (Supp. 99-1). Amended by final rulemaking at 11 A.A.R. 3660, effective November 15, 2005 (Supp. 05-3). Amended by final rulemaking at 24 A.A.R. 3418, effective December 4, 2018 (Supp. 18-4).

R4-20-116. Rehearing or Review of Decision

- A.** Except as provided in subsection (G), a party in a contested case before the Board who is aggrieved by a decision rendered in the case may file with the Board not later than 30 days after service of the decision, a written motion for rehearing or review of the decision specifying the particular grounds for the rehearing or review. For purposes of this Subsection a decision is deemed to be served when personally delivered or mailed by certified mail to the party at the party's last known residence or place of business.
- B.** A party may amend a motion for rehearing or review at any time before it is ruled upon by the Board. Any other party may file a response within 15 days after service of the motion or amended motion. The Board may require the filing of written brief upon the issues raised in the motion and may provide for oral argument.
- C.** A rehearing or review of the decision may be granted for any of the following causes materially affecting the moving party's rights:
1. Irregularity in the administrative proceedings of the Board, the Board's informal interviewing officer or the prevailing party, or any order or abuse of discretion that deprived the moving party of a fair hearing or interview;
 2. Misconduct of the Board or the prevailing party;
 3. Accident or surprise that could not have been prevented by ordinary prudence;
 4. Newly discovered material evidence that could not with reasonable diligence have been discovered and produced at the original hearing;
 5. Excessive or insufficient penalties;
 6. Error in the admission or rejection of evidence or other errors of law occurring at the administrative hearing; or
 7. The decision is not justified by the evidence or is contrary to law.
- D.** The Board may affirm or modify the decision or grant a rehearing or review to all or any of the parties and on all or part of the issues for any of the reasons in subsection (C). An order granting a rehearing or review shall specify with particularity the grounds on which the rehearing or review is granted,

and the rehearing or review shall cover only those matters specified.

- E.** Not later than 10 days after a decision is rendered, the Board may on its own initiative order a rehearing or review of its decision for any reason for which the Board might have granted a rehearing or review on motion of a party. After giving the parties or the parties' counsel notice and an opportunity to be heard on the matter, the Board may grant a motion for rehearing or review for a reason not stated in the motion.
- F.** When a motion for rehearing or review is based upon affidavits, the moving party shall serve the affidavits with the motion. An opposing party may within 10 days after service, serve opposing affidavits. The Board may extend the period for an additional 20 days for good cause shown or by written stipulation of the parties. The Board may permit reply affidavits.
- G.** If in a decision the Board makes specific findings that the immediate effectiveness of the decision is necessary for the immediate preservation of the public peace, health or safety and that a rehearing or review of the decision is impracticable, unnecessary or contrary to the public interest, the Board may issue the decision as a final decision without an opportunity for a rehearing or review. If a decision is issued as a final decision without an opportunity for rehearing or review, a party shall make application for judicial review of the decision within the time limits permitted for applications for judicial review of the Board's final decisions.
- H.** For purposes of this Section the terms "contested case" and "party" have the same meaning as in A.R.S. § 41-1001 and "appealable agency action" has the same meaning as in A.R.S. § 41-1092.

Historical Note

Adopted effective October 24, 1983 (Supp. 83-5). Former Section R4-20-117 amended and renumbered as R4-20-116 effective September 18, 1987 (Supp. 87-3). Amended effective September 13, 1989 (Supp. 89-3). Amended effective July 22, 1994 (Supp. 94-3). Amended by final rulemaking at 11 A.A.R. 3660, effective November 15, 2005 (Supp. 05-3).

R4-20-117. Scope of Practice

- A.** The scope of practice of a dispensing optician means the activities described in A.R.S. § 32-1671(3).
- B.** The dispensing optician shall fill a refill of a contact lens prescription prior to its expiration date with no more than the sufficient quantity of replacement contact lenses needed through the expiration date.

Historical Note

Adopted effective September 18, 1987 (Supp. 87-3). Amended by final rulemaking at 11 A.A.R. 3660, effective November 15, 2005 (Supp. 05-3). Amended by final rulemaking at 13 A.A.R. 1216, effective May 5, 2007 (Supp. 07-1).

R4-20-118. Unprofessional Conduct

In addition to actions specified in A.R.S. § 32-1696, unprofessional conduct in the practice of optical dispensing includes the following:

1. Substandard care as specified in R4-20-119;
2. Failing to maintain a copy or record of the customer's prescription and failing to prepare and maintain a record of optical devices dispensed for at least three years. The record of optical devices dispensed shall include the brand, style, and size of the frame, if any, and the style, material, source, and all other information necessary to accurately reproduce each lens. The record shall be separate from optometrists' or physicians' records;

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3. Failing or refusing to make a copy of a prescription or record described in subsection (2) promptly available to the customer who is the subject of the prescription or record, the customer's designated representative, the customer's prescribing practitioner, or the Board or its investigator, when requested. Notwithstanding this provision, a dispensing optician need not make the record of contact lenses dispensed on a trial basis available to the customer;
4. Failing or refusing to take corrective action or investigate a customer complaint concerning the manufacture or fit of eyeglasses, contact lenses, or other optical devices dispensed at the establishment by which the dispensing optician is employed if there is a substantial basis for the complaint;
5. Failure of any person, corporation, company, partnership, firm, association or society to maintain an active optical establishment license as required by R4-20-110; and
6. Failure to comply with a Board order.

Historical Note

Adopted effective September 18, 1987 (Supp. 87-3). Amended effective July 22, 1994 (Supp. 94-3). Amended by final rulemaking at 11 A.A.R. 3660, effective November 15, 2005 (Supp. 05-3). Amended by final rulemaking at 14 A.A.R. 3668, effective November 8, 2008 (Supp. 08-3). Amended by final rulemaking at 19 A.A.R. 584, effective May 5, 2013 (Supp. 13-1).

R4-20-119. Standard Care

- A.** It is standard care for a dispensing optician:
1. To dispense improperly manufactured eyeglasses or contact lenses. If a complaint indicates that eyeglasses or contact lenses dispensed by a dispensing optician or other employee of an optical establishment may have been improperly manufactured, the Board shall be guided in its determination of the facts by referring to the standards incorporated by reference in subsection (B) with regard to the individual parameters listed in the standards and considering patient wear, care, and usage;
 2. When interpreting written prescriptions:
 - a. To fail to follow standards incorporated by reference in subsection (B) in determining lens powers due to differences in vertex distances, base curvatures, special lens requirements, and facial fitting problems; or
 - b. To fail to comply with special instructions of the vision practitioner or optometrist shown on the prescription without the full knowledge and consent of the customer, the physician, or optometrist; or
 - c. To fill prescriptions beyond the expiration date indicated on the prescription;
 3. To fail to follow manufacturer's guidelines regarding usual and customary lens thickness of eyewear;
 4. To intentionally or negligently injure a customer during the course of optical dispensing; or
 5. To fail to give the customer appropriate instructions on the care, handling, and wearing of an optical device.
- B.** The following standards published by the American National Standards Institute, Inc., (ANSI), 1819 L Street, NW, Suite 600, Washington, DC 20036, are incorporated by reference, and no further editions or amendments and are on file with the Board:
1. ANSI Z80.1 2015, "Prescription Ophthalmic Lenses-Recommendations."
 2. ANSI - Z80.20 2016, "Contact Lenses-Standard Terminology, Tolerances, Measurements And Physiochemical Properties."

3. ANSI Z87.1 2015, "Occupational and Educational Personal Eye and Face Protection Devices."
4. ANSI Z80.9 2015, "Optical Devices for Low Vision."

Historical Note

Adopted effective September 18, 1987 (Supp. 87-3). Amended effective July 22, 1994 (Supp. 94-3). Amended by final rulemaking at 11 A.A.R. 3660, effective November 15, 2005 (Supp. 05-3). Amended by final rulemaking at 19 A.A.R. 584, effective May 5, 2013 (Supp. 13-1). Amended by final rulemaking at 24 A.A.R. 3418, effective December 4, 2018 (Supp. 18-4).

R4-20-120. Continuing Education; Hours Required; Reporting

- A.** A person licensed as a dispensing optician shall complete no fewer than 12 hours of continuing education that is approved by the Board for credit.
1. For the initial period of licensure for an applicant who obtains initial licensure between January 1 and June 30, continuing education credits are due by December 31 of the second full calendar year of licensure.
 2. For the initial period of licensure for an applicant who obtains initial licensure between July 1 and December 31, continuing education credits are due by December 31 of the third full calendar year of licensure.
 3. Continuing education credits for every subsequent period of licensure are due every three years thereafter at the time of licensure renewal.
- B.** Each licensee shall submit documentation to the Board verifying that the licensee has completed 12 hours or more of continuing education, within each three-year period. The licensee shall provide documentation that identifies the courses and the number of credit hours completed and include the following:
1. If the course is from a school approved by the Commission on Opticianry Accreditation or college-accredited course, proof of course completion and the number of credits earned.
 2. If the course is part of an event, a certificate of completion issued by the sponsor which identifies each part completed.
 3. If the course is a home-study course, a certificate of completion issued by the sponsor and the number of credits earned.
 4. For any other course, a certificate of completion issued by the sponsor or presenter and the number of credits earned.
 5. If the licensee cannot obtain the above documentation, any other documents, affidavits, or testimony which provides assurance that the licensee has completed the requirements.
- C.** Of the 12 hours of continuing education, each licensee shall obtain at least:
1. Four hours in eyeglass fitting and dispensing;
 2. Three hours in contact lens fitting and dispensing;
 3. One hour in state or national opticianry standards.
- D.** Hours will be measured as follows: one credit hour will be assigned for each 50 minutes of a single session.
- E.** The Board shall discipline any licensee who submits false information for continuing education documentation.
- F.** A licensee shall not apply any hours accrued during one reporting period to any subsequent reporting period.

Historical Note

Adopted effective July 22, 1994 (Supp. 94-3). Amended by final rulemaking at 11 A.A.R. 3660, effective November 15, 2005 (Supp. 05-3). Amended by final rulemaking

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at 26 A.A.R. 202, with an immediate effective date of January 14, 2020 (Supp. 20-1).

R4-20-121. Continuing Education; Approval of Courses
ABO and NCLE courses are approved by the Board for continuing education credit. Other individuals or organizations seeking approval of a continuing education course for credit shall apply to the Board 45 days before the date the course is offered. The application shall contain the following information on the course:

1. Title and description of course content;
2. Time, date, and place;
3. Number of credit hours;
4. Name of the sponsor and presenter; and
5. Brief curriculum vitae of the presenter.

Historical Note

Adopted effective July 22, 1994 (Supp. 94-3). Amended by final rulemaking at 11 A.A.R. 3660, effective November 15, 2005 (Supp. 05-3).

R4-20-122. Agency Record; Directory of Substantive Policy Statements

The official rulemaking record for each rulemaking and a directory of substantive policy statements is located in the office of the Board and may be reviewed Monday through Friday, 8:00 a.m. to 5:00 p.m., except state holidays.

Historical Note

New Section made by final rulemaking at 11 A.A.R. 3660, effective November 15, 2005 (05-3).

R4-20-123. Repealed

Historical Note

New Section made by final rulemaking at 11 A.A.R. 3660, effective November 15, 2005 (05-3). Repealed by final rulemaking at 24 A.A.R. 3418, effective December 4, 2018 (Supp. 18-4).

R4-20-124. Repealed

Historical Note

New Section made by final rulemaking at 11 A.A.R. 3660, effective November 15, 2005 (05-3). Repealed by final rulemaking at 24 A.A.R. 3418, effective December 4, 2018 (Supp. 18-4). Repealed by final rulemaking at 24 A.A.R. 3418, effective December 4, 2018 (Supp. 18-4).

R4-20-125. Repealed

Historical Note

New Section made by final rulemaking at 11 A.A.R. 3660, effective November 15, 2005 (05-3). Repealed by final rulemaking at 24 A.A.R. 3418, effective December 4, 2018 (Supp. 18-4).

R4-20-126. Repealed

Historical Note

New Section made by final rulemaking at 11 A.A.R. 3660, effective November 15, 2005 (05-3). Repealed by final rulemaking at 24 A.A.R. 3418, effective December 4, 2018 (Supp. 18-4).

Table 1. Time-frames (in days)

Type of Approval	Statutory Authority	Overall Time-frame	Administrative Completeness Time-frame	Substantive Review Time-frame
License by Examination (R4-20-102)	A.R.S. § 32-1682 A.R.S. § 32-1684	60	30	30
License by Comity (R4-20-107)	A.R.S. § 32-1683	90	30	60
Optical Establishment License (R4-20-110)	A.R.S. § 32-1684.01	60	30	30
Optician's License Renewal (R4-20-109)	A.R.S. § 32-1682	60	30	30
Optical Establishment License Renewal (R4-20-115)	A.R.S. § 32-1684.01	60	30	30

Historical Note

Table adopted by final rulemaking at 5 A.A.R. 418, effective January 15, 1999 (Supp. 99-1). Table amended by final rulemaking at 11 A.A.R. 3660, effective November 15, 2005 (Supp. 05-3). Amended by final rulemaking at 19 A.A.R. 584, effective May 5, 2013 (Supp. 13-1). Amended by final rulemaking at 24 A.A.R. 3418, effective December 4, 2018 (Supp. 18-4).

C-5

DEPARTMENT OF FORESTRY AND FIRE MANAGEMENT

Title 4, Chapter 36, Article 2, Arizona State Fire Code and Article 3, International Fire Code
Modifications and Accepted Practices

Amend: R4-36-201, R4-36-301, R4-36-302, Exhibit A, R4-36-303, R4-36-304

Repeal: R4-36-305, R4-36-306, R4-36-307, R4-36-308, R4-36-309



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - REGULAR RULEMAKING

MEETING DATE: November 2, 2021

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

FROM: Council Staff

DATE: October 15, 2021

SUBJECT: DEPARTMENT OF FORESTRY AND FIRE MANAGEMENT
Title 4, Chapter 36, Article 2, Arizona State Fire Code and Article 3, International Fire Code Modifications and Accepted Practices

Amend: R4-36-201, R4-36-301, R4-36-302, Exhibit A, R4-36-303,
R4-36-304

Repeal: R4-36-305, R4-36-306, R4-36-307, R4-36-308, R4-36-309

Summary:

This regular rulemaking from the Department of Forestry and Fire Management (Department) seeks to amend six rules in Articles 2 and 3 and repeal five rules in Article 3 related to the State Fire Code. Specifically, as part of the proposed course of action in the Five-Year Review Report which was approved by the Council in January 2020, the Department is proposing to amend its rules to adopt the 2018 edition of the International Fire Code (IFC 2018) as the minimum State Fire Code in order to better regulate fire hazards in Arizona and be more consistent with minimum national standards. Additionally, the Department intends to repeal some of its rules which are no longer necessary because it is adopting the IFC 2018 in its entirety.

In addition to the safety measures addressed in the IFC 2012, the IFC 2018 addresses several additional items of concern, such as battery storage facilities and facilities that produce

cannabis products. The Department indicates that adopting the IFC 2018 will allow the state to enforce life safety protections relating to such additional items of concern. The Department also states that adopting the IFC 2018 will establish minimum requirements consistent with nationally recognized good practice for providing a reasonable level of life safety and property protection and will ensure a reasonable level of safety for firefighters and emergency responders during emergency operations.

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

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

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

This rulemaking does not establish a new fee or contain a fee increase.

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

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

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

The Department has determined that adopting the IFC 2018 will better regulate fire hazards in Arizona. Adopting the IFC 2018 will establish minimum requirements, providing a reasonable level of safety for any person residing in, doing business with, or who is physically present in the State of Arizona.

The Department states that costs associated with the rule changes will not have a broad economic impact. The economic impact of the changes will range from minor to significant, and will differ based on individual compliance with current and updated safety requirements.

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

The Department states that the IFC 2018 provides a reasonable level of life safety and property protection. However, the Fire Code Official has the authority to grant modifications to specific safety requirements as necessary on an individual basis. The amended rules impose the least burden and costs to those who are regulated in order to provide a reasonable level of safety and property protection.

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

The Department bears the cost of the rulemaking. Other than these costs, there are no state agency costs or benefits directly affected by the rulemaking and no new full time employees

are necessary. There will be minimal costs and benefits to political subdivisions that must comply with additional safety requirements because many fire districts in Arizona already comply with the IFC 2018. Costs of the changes to businesses will range from minor to significant based on individual compliance with current and updated safety requirements. As a result, there may be some impact on public and private employment to the extent that more or less employees are necessary to comply with the new minimum safety standards. Generally, the benefit of adopting the new rules provides a reasonable level of life safety and property protection.

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

The Department indicates it did not make any substantial changes to the proposed rules between the Notice of Proposed Rulemaking and the Notice of Final Rulemaking

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

The Department indicates it did not receive any written comments related to this rulemaking. The Department held an oral proceeding related to this rulemaking on July 6, 2021. The Department indicates two representatives from local fire districts and one representative from the International Code Council attended the oral proceeding, and all three representatives expressed support for the rulemaking.

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

Pursuant to A.R.S. § 41-1037(A), if an agency proposes an amendment to an existing rule that requires the issuance of a regulatory permit, license, or agency authorization, the agency shall use a general permit, as defined by A.R.S. § 41-1001(11), if the facilities, activities or practices in the class are substantially similar in nature unless certain exceptions apply.

The Department indicates it issues specific permits for operations and construction. Pursuant to the exception in A.R.S. § 41-1037(A)(3), the Department states a general permit is not feasible because each permit must ensure that the applicant meets the specific requirements necessary for the applicant to operate safely in compliance with the IFC.

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

The Department indicates that the National Fire Protection Association (NFPA) Codes and Standards apply to these rules, but these rules are not more stringent than the NFPA.

11. Conclusion

To enact their proposed course of action from the 5YRR approved by the Council in January 2020, the Department seeks to amend its rules to incorporate the 2018 edition of the International Fire Code. Additionally, the Department intends to repeal some of its rules which are no longer necessary because it is adopting the IFC 2018 in its entirety.

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

August 25, 2021

Ms. Nicole Sornsin, Chair
The Governor's Regulatory Review Council
100 North 15th Avenue, Ste. 402
Phoenix, AZ 85007

**Re: A.A.C. Title 4. Professions and Occupations
Chapter 36. Department of Forestry and Fire Management**

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:

1. Close of record date: The rulemaking record was closed on July 6, 2021 following a period for public comment and an oral proceeding.
2. Relation of the rulemaking to a five-year-review report: This rulemaking relates to a Five-year Review Report approved by the Council in January 2020.
3. New fee or fee increase: This rulemaking does not establish a new fee or increase an existing fee.
4. Immediate effective date: An immediate effective date is not requested.
5. Certification regarding studies: I certify that the Department did not rely on any studies for this rulemaking.
8. Certification that the preparer of the EIS notified the JLBC of the number of new full-time employees necessary to implement and enforce the rule: I certify that the rules in this rulemaking will not require a state agency to employ a new full-time employee. No notification was provided to JLBC.
9. List of documents enclosed:
 - a. Cover letter signed by the Department's Assistant Director;
 - b. Notice of Final Rulemaking including the preamble, table of contents for the rulemaking, and rule text; and
 - c. Economic, Small Business, and Consumer Impact Statement.

Sincerely,



Cassie Peters
Assistant Director

NOTICE OF FINAL RULEMAKING

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 36. DEPARTMENT OF FORESTRY AND FIRE MANAGEMENT

PREAMBLE

- 1. Sections Affected**

<u>Sections Affected</u>	<u>Rulemaking Action</u>
R4-36-201	Amend
R4-36-301	Amend
R4-36-302	Amend
Exhibit A	Amend
R4-36-303	Amend
R4-36-304	Amend
R4-36-305	Repeal
R4-36-306	Repeal
R4-36-307	Repeal
R4-36-308	Repeal
R4-36-309	Repeal

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

Authorizing Statute: A.R.S. 37-1302(A)(2)
Implementing Statute: A.R.S. 37-1383(A)(2)

- 3. The effective date of the rule**

The rules become effective 60 days after filing with the Secretary of State.

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

Notice of Rulemaking Docket Opening: 27 A.A.R. 850, June 4, 2021
Notice of Proposed Rulemaking: 27 A.A.R. 845, June 4, 2021

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

Name: Cassie Peters, Assistant Director
Address: Department of Forestry and Fire Management
1110 W. Washington Street Suite 100
Phoenix, Arizona 85007
Telephone: 602-364-1015
Fax: 602-771-1421

E-mail: cpeters@dffm.az.gov
Web site: dffm.az.gov

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

The Department needs to amend and repeal some rules consistent with its five-year review report that was approved by the Governor's Regulatory Review Council in January 2020. The Department proposed to amend its rules to adopt the 2018 edition of the International Fire Code (IFC 2018) as the minimum State Fire Code in order to better regulate fire hazards in Arizona and be more consistent with minimum national standards. The Department also needs to repeal some of its rules which are not necessary because it is adopting the IFC 2018 in its entirety.

In order to ensure that Arizona meets national standards for fire protection and prevention, the Department adopts the entirety of the International Fire Code (IFC), incorporated by reference. The IFC 2012 is incorporated by reference in R4-36-201 and needs to be replaced with the IFC 2018. In addition to the safety measures addressed in the IFC 2012, the IFC 2018 addresses several additional items of concern, such as battery storage facilities and facilities that produce cannabis products. Adopting the IFC 2018 will allow the state to enforce life safety protections relating to such additional items of concern.

Adopting the IFC 2018 will establish minimum requirements consistent with nationally recognized good practice for providing a reasonable level of life safety and property protection. Additionally, it will ensure a reasonable level of safety for fire fighters and emergency responders during emergency operations.

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 rulemaking is necessary to promote a statewide interest if the rulemaking will diminish a previous grant of authority of a political subdivision of this state:

Not applicable.

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

All costs associated with the changes will not have a broad economic impact. Rather, the economic impact of the changes will be based on individual compliance with current and updated safety requirements, meaning the range of economic impact could be minor to significant.

Chapter 1: There were nine permits added as part of additions to the code. No significant economic impact.

Chapter 2: Many new definitions are given to coincide with new chapters. In addition, occupation type definitions have been redefined to coincide with the State Health Department's standards.

Chapter 3 319.1 Mobile Food Preparation Vehicles that are equipped with appliances that produce smoke or grease-laden vapors shall comply with this section, but these requirements have been in place since the IFC 2015 Edition.

Chapter 4 Lockdown plans require the approval of the fire code official

Chapter 9 901.6.2.2 High-rise buildings: Requires integrated testing of high-rise buildings to conform to NFPA 4. The test performance every 10 years or what is required by the design documents. This test is in addition to other required tests such as those required by NFPA 25 for water-based fire protection systems and NFPA 72 for fire alarm systems. There may be a marginal cost for high-rise building owners for vendors to test or assist in testing systems.

903.2.2 Ambulatory care facilities: Requires fire sprinklers in the entire building rather than just the entire floor and all floors below leading to exit discharge. Not believed to be a significant financial impact because most buildings will already have fire sprinklers throughout the entire building already.

Chapter 11 1103.9 Carbon monoxide alarms: The new code requires CO alarms based on use (Dwelling units, Sleeping units) and gives sole battery options.

1105.9 Group I-2 automatic sprinkler system: Adds fire sprinkler requirement to areas below the level of exit discharge in Group I-2 occupancies. Similar to 903.2.2, most buildings will already have this in place. However, if it does require installation, the cost could be significant to the individual owner.

Chapter 12: All elements of Chapter 6 related to energy systems with some additional requirements.

1204.2.1 Solar photovoltaic systems for Group R-3 buildings: It shall not apply to equipment associated with the generation, control, transformation, transmission, or distribution of energy installations that is under the exclusive control of an electric utility or lawfully designated agency.

Chapter 31 Title change: Adds safety requirements for outdoor assemblies including stages and other events. Comes as a result of injuries at an outdoor concert with a weather event. Conforms to mass gathering requirements of the health department.

Chapter 32: Two significant changes: First, increased fire access doors from 100 ft. to 125 ft. and commodities now align with NFPA 13 commodity classifications. This will save time and money for design professionals when designing fire suppression for high-piled storage. More importantly, it will reduce the risk of design deficiencies by decreasing commodity misclassification.

Chapter 38: Entirely new chapter on higher education laboratories. As a B Occupancy, places safety requirements primarily centered on hazardous material storage and handling.

Chapter 39 3901.1: Plant processing or extraction facilities shall comply with this chapter and the International Building Code. Due to recent voter approval for recreational use of cannabis in the State of Arizona, new and existing facilities may be impacted if they are engaging in plant processing and extracting operations.

Chapter 51: Cooking sprays have been classified and several regulations placed on storage.

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

There are no substantial changes between the proposed rules and final rules.

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

The Department held an Oral Proceeding on July 6, 2021. In addition to Department staff, two representatives from local fire districts and one representative from the International Code Council attended the Oral Proceeding. All three representatives expressed support for the rulemaking.

12. All agencies shall list other matters prescribed by statute applicable to the specific agency or to any specific rule or class of rules. Additionally, an agency subject to

Council review under A.R.S. §§ 41-1052 and 41-1055 shall respond to the following questions:

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

The Department issues specific permits for operations and construction. A general permit is not feasible because each permit must ensure that the applicant meets the specific requirements necessary for the applicant to operate safely in compliance with the IFC.

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

The National Fire Protection Association (NFPA) Codes and Standards apply to these rules, but these rules are not more stringent than the NFPA.

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 incorporation by reference material as specified in A.R.S. § 41-1028 and its location in the rules:

R4-36-201 incorporates by reference the IFC 2018.

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 rules were not made as emergency rules.

15. The full text of the rules follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS
CHAPTER 36. DEPARTMENT OF FORESTRY AND FIRE MANAGEMENT
ARTICLE 2. ARIZONA STATE FIRE CODE

Section

R4-36-201. Incorporation by Reference of the International Fire Code

ARTICLE 3. INTERNATIONAL FIRE CODE MODIFICATIONS AND ACCEPTED PRACTICES

Section

R4-36-301. Definitions

R4-36-302. Appendices

Exhibit A. Incorporated Appendices

R4-36-303. Permits

R4-36-304. Inspections and Enforcement

R4-36-305. ~~General Precautions Against Fire~~ Repealed

R4-36-306. ~~Emergency Planning and Preparedness~~ Repealed

R4-36-307. ~~Fire Service Features~~ Repealed

R4-36-308. ~~Building Services and Systems~~ Repealed

R4-36-309. ~~Fire Protection Systems~~ Repealed

ARTICLE 2. ARIZONA STATE FIRE CODE

R4-36-201. Incorporation by Reference of the International Fire Code

Unless otherwise provided by law, any person residing, doing business, or who is physically present within the state of Arizona shall comply with the provisions of the International Fire Code (~~2012~~2018 Edition), including D102.1 and D107.1 of Appendix D and all provisions of Appendices B, C, E, F, G, H, I, ~~and J~~, and N, which is published by the International Code Council, incorporated by reference as the State Fire Code, and modified by Article 3. The incorporated material does not include any later amendments or editions. Copies of the International Fire Code are available from the International Code Council, 4051 W. Flossmoor Road, Country Club Hills, IL 60478-5795 and a copy is available for inspection at the Office of the State Fire Marshal.

ARTICLE 3. INTERNATIONAL FIRE CODE MODIFICATIONS AND ACCEPTED PRACTICES

R4-36-301. Definitions

The following terms as used in the International Fire Code, incorporated by reference at R4-36-201, apply to the State Fire Code established in this Chapter, unless the context otherwise requires:

1. “Department of fire prevention” means the State Fire Marshal or the State Fire Marshal’s designated representative.
- ~~1.2. Wherever the terms “fire chief” or~~ means the State Fire Marshal.

3. ~~“fire Fire code official” are used in the International Fire Code, these terms include means the State Fire Marshal or the State Fire Marshal’s designated representative, unless the context otherwise requires.~~

2.4. ~~Wherever the terms “fire Fire department” or “department of fire prevention” are used in the International Fire Code, these terms include means the State Fire Marshal or the State Fire Marshal’s designated representative unless the context otherwise requires.~~

3. ~~Section 202, the definition of Occupancy Classification for R-3 within the Residential Group is modified to read: Residential occupancies where the occupancies are primarily permanent in nature and not classified as R-1, R-2, R-4, or I including:~~

- a. ~~Boarding houses (non-transient) with 16 or fewer occupants~~
- b. ~~Boarding houses (transient) with 10 or fewer occupants~~
- c. ~~Building that do not contain more than four dwelling units~~
- d. ~~Care facilities that provide accommodations for five or fewer persons receiving care~~
- e. ~~Congregate living facilities (non-transient) with 16 or fewer occupants~~
- f. ~~Congregate living facilities (transient) with 10 or fewer occupants~~
- g. ~~Care facilities within a dwelling. Care facilities for five or fewer persons receiving care that are within a single-family dwelling are permitted to comply with the International Residential Code provided an automatic sprinkler system is~~

~~installed in accordance with Section 903.3.1.3 or Section P2904 of the
International Residential Code.~~

R4-36-302. Appendices

The International Fire Code (~~2012~~ 2018 Edition), which is incorporated by reference at R4-36-201, is modified as shown in Exhibit A.

EXHIBIT A. Incorporated Appendices

Section 101.2.1 The following appendices are adopted as part of this Code:

B: Fire-Flow Requirements for Buildings

C: Fire Hydrant Locations and Distribution

D102.1 or the minimum requirement of the local fire response agency

D107.1 or the minimum requirement of the local building or subdivision authority

E: Hazard Categories

F: Hazard Ranking

G: Cryogenic Fluids – Weight and Volume Equivalents

H. Hazardous Materials Management Plan (HMMP) and Hazardous Materials Inventory

Statement (HMIS) Instructions

I. Fire Protection Systems – Noncompliant Conditions

J. Building Information Sign

N. Indoor Trade Shows and Exhibitions

R4-36-303. Permits

- A. The following time-frames are established for permits issued under the State Fire Code:
1. The Office of the State Fire Marshal shall determine within five business days after receipt of a permit application and plan submission whether the permit application and plan are administratively complete and ready for review.
 2. The Office of the State Fire Marshal shall either grant or deny the permit within 60 calendar days after the documents are determined to be administratively complete.
 3. A permittee shall commence work within 180 days after the permit is issued or apply in writing for an extension from the State Fire Marshal. Without an extension, the permit is valid only for 180 days from the date of issuance.
- B. The holder of an operational or construction permit is entitled to inspections as prescribed in this Chapter. The Office of the State Fire Marshal shall invoice a re-inspection caused by a violation or cancellation without 24-hours' notice at a rate established in the fee schedule and shall not conduct the re-inspection until the fee is paid.
- ~~C. Section 105.1.1 is modified to read: Permits required. Any property owner or authorized agent that intends to conduct an operation or business, install or modify systems and equipment that are regulated by this code, or cause any such work to be done, shall first make application to the fire code official and obtain the required permit. The fire code official is authorized to waive the requirement for any permit listed in sections 105.6.1 through 105.6.46 and 105.7.1 through 107.16.~~

- D.** Section 105.1.2 is modified to read: ~~Types of permits. There shall be two types of permits as follows:~~
1. ~~Operational permit. An operational permit allows the applicant to conduct an operation for which a permit is required by Section 105.6 for a period that does not exceed 180 days from the date of issuance.~~
 2. ~~Construction permit. A construction permit allows the applicant to install or modify systems and equipment for which a permit is required by Section 105.7.~~
- E.** Section 105.2.4, the first sentence is modified to read: ~~The fire code official shall examine or cause to be examined each application for a permit or a permit amendment.~~
- F.** Section 105.3.1, the first sentence is modified to read: ~~An operational permit shall remain in effect until reissued, renewed, or revoked, or for 180 days.~~
- G.** Section 105.3.3 is modified to read: ~~Occupancy prohibited before approval. The building or structure shall not be occupied prior to the fire code official issuing a report indicating that applicable provisions of this code have been met.~~

R4-36-304. Inspections and Enforcement

- A.** Section ~~108.1~~ 109.1 is modified to read: Board of appeals established. In order to ~~To~~ hear and decide appeals of orders, decisions, or other determinations made by the fire code official regarding application or interpretation of this code, the authority having jurisdiction may establish a board of appeals. If established, the board of appeals shall be appointed by and hold office at the pleasure of the governing body. The fire code official shall be an ex officio member of the board of ~~appeal~~ appeals with no vote on any matter

before the board. The board of appeals shall adopt rules of procedure for conducting its business. The board of appeals shall provide a written copy of the findings and decision in an appeal to the appellant and fire code official.

B. ~~Section 109.4 is modified to read: Violation penalties. If a person violates a provision of this code or fails to comply with any of the requirements of the code, the State Fire Marshal shall proceed in accordance with A.R.S. § 41-2196.~~

C. ~~Section 111.2 is modified to read: Issuance. The State Fire Marshal shall issue a stop work order, referred to in statute as a cease and desist order, in accordance with A.R.S. § 41-2196.~~

D. ~~Section 111.4 is modified to read: Failure to Comply. Any person who shall continue any work having been served with a stop work order, except such work as that person is directed to perform to remove a violation or unsafe condition, is subject to the provisions of A.R.S. § 41-2196.~~

R4-36-305. General Precautions Against Fire Repealed

A. ~~Section 307.2 is modified to read: Permit required. When required by the fire code official, a permit shall be obtained in accordance with Section 105.6 before kindling a fire for recognized silvicultural or range or wildlife management practices, prevention or control of disease or pests, or a bonfire. Application for the required permit shall only be made by and a permit issued to the owner of the land upon which the fire is to be kindled.~~

B. ~~Section 311.1.1 is modified to read: Abandoned premises. Buildings, structures, and premises for which an owner cannot be identified or located by dispatch of a certificate of~~

~~mailing to the last known or registered address, which persistently or repeatedly become unprotected or unsecured, which have been occupied by unauthorized persons or for illegal purposes, or which present a danger of structural collapse or fire spread to adjacent properties shall be considered abandoned, declared unsafe, and abated in accordance with state law.~~

R4-36-306. Emergency Planning and Preparedness Repealed

~~Section 401.1 is modified to read: Scope. Reporting of emergencies, coordination with the local authorized emergency response providers, emergency plans, and procedures for managing or responding to emergencies shall comply with the provisions of this Section.~~

R4-36-307. Fire Service Features Repealed

A. ~~Section 501.2 is modified to read: Permits. A permit shall be required as set forth in Sections 105.6 and 105.7 as modified by this Article.~~

B. ~~Section 508.1.1 is modified to read: Location and access. The location and accessibility of the fire command center shall be approved by a local authorized emergency response provider.~~

R4-36-308. Building Services and Systems Repealed

A. ~~Section 606.2 is modified to read: Refrigerants. The use and purity of new, recovered, and reclaimed refrigerants shall be in accordance with state law.~~

- B.** ~~Section 606.14 is modified to read: Notification of refrigerant discharges. The fire department shall be notified immediately when a discharge becomes reportable under state, federal, or local regulations in accordance with Section 5003.3.1.~~
- C.** ~~Sections 5003.3.1 and 5003.3.1.4 replace “fire code official” with “fire department.”~~

R4-36-309. Fire Protection Systems Repealed

~~Section 901.1 is modified to read: Scope. The provisions of this Chapter shall specify where fire protection systems are required and shall apply to the design, installation, inspection, operation, testing, and maintenance of all fire protection systems. Absent specific statutory authority to the contrary, these provisions provide the minimum protective standards relating to fire protection systems.~~

ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT¹

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 36. DEPARTMENT OF FORESTRY AND FIRE MANAGEMENT

1. Identification of the rulemaking:

The Department needs to amend its rules related to the International Fire Code.

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

Currently, the Department's rules incorporate the 2012 edition of the International Fire Code (IFC 2012). However, the Department needs to amend and repeal some rules consistent with its five-year review report that was approved by the Governor's Regulatory Review Council in January 2020. In that Report, the Department indicated that its rules needed to be amended in order to incorporate the 2018 edition of the International Fire Code (IFC 2018) which addresses additional items of concern such as battery storage facilities and facilities that produce cannabis products.

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 Department proposed to amend its rules to adopt the IFC 2018 as the minimum State Fire Code in order to better regulate fire hazards in Arizona and be more consistent with minimum national standards. In addition to the safety measures addressed in the IFC 2012, the IFC 2018 addresses several additional items of concern, such as battery storage facilities and facilities that produce cannabis products.

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

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

Establishing a minimum fire code for Arizona that includes additional regulations relating to items such as battery storage facilities and cannabis production facilities will better protect the public health and welfare from fire hazards.

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

All costs associated with the changes will not have a broad economic impact. Rather, the economic impact of the changes will be based on individual compliance with current and updated safety requirements, meaning the range of economic impact could be minor to significant.

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: Cassie Peters, Assistant Director
Address: Department of Forestry and Fire Management
1110 W. Washington Street Suite 500
Phoenix, Arizona 85007
Telephone: 602-364-1015
Fax: 602-771-1421
E-mail: cpeters@dffm.az.gov
Web site: dffm.az.gov

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

Adopting the IFC 2018 will establish minimum requirements consistent with nationally recognized good practice for providing a reasonable level of life safety and property protection for any person residing in, doing business with, or who is

physically present in, the state of Arizona. Additionally, it will ensure a reasonable level of safety for fire fighters and emergency responders during emergency operations.

5. Cost-benefit analysis:

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

Other than the cost to the Department to complete the rulemaking, there are no state agency costs or benefits directly affected by the rulemaking and no new FTEs are necessary.

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

There will be minimal costs and benefits to political subdivisions that will have to comply with additional safety requirements because many fire districts in Arizona already follow the IFC 2018.

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

Costs of the changes to the rules will range from minor to significant based on individual compliance with current and updated safety requirements. The benefit of adopting the new rules providing a reasonable level of life safety and property protection for all businesses.

6. Impact on private and public employment:

There may be some impact on public and private employment to the extent that more or less employees are necessary to comply with the new minimum safety standards.

7. Impact on small businesses²:

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

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

All businesses, large and small.

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

There were nine permits added as part of additions to the code. No significant economic impact.

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

The Fire Code Official is authorized to consolidate multiple permits into a single permit. Exercising this option will reduce the economic impact and administrative cost to small businesses.

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

As discussed above, costs of the changes to the rules will range from minor to significant based on individual compliance with current and updated safety requirements. The benefit of adopting the new rules providing a reasonable level of life safety and property protection.

9. Probable effects on state revenues:

No significant effects on state revenues.

10. Less intrusive or less costly alternative methods considered:

The IFC 2018 provides a reasonable level of life safety and property protection. However, the Fire Code Official has the authority to grant modifications to specific safety requirements as necessary on an individual basis.

2018 IFC Update

Based on the 2018 International Fire Code,® (IFC®)

ICC LEARNING CENTER

The *International Fire Code*® (IFC®), establishes minimum regulations for fire safety.

This handout will identify important changes in the IFC from 2015 to 2018 edition. Participants will be presented with those changes that will most impact their use of the code when they adopt these I-Codes. The learner will receive an overview of the most important code changes.

Goal

Participants will be able to use this document to identify changes between the 2015 and 2018 IFC allowing them to apply these code requirements to design, plan submittals and/or inspection.

The lecture and activity format allows participants to discuss the changes, reasons for the changes, and answer knowledge review questions. Information presented will allow participants to apply these new code requirements to design, plan review, and/or inspection.

Objectives

Upon completion, participants will be better able to:

- Identify the most significant differences between the 2015 and the 2018 IFC.
- Explain the differences between the current and previous edition.
- Identify changes in organization and code requirements.
- Identify the applicability of design, plan review and inspection requirements.

Content

Chapters of the IFC included in this handout:

- Chapter 3, General Requirements
- Chapter 4, Emergency Planning and Preparedness
- Chapter 5, Fire Service Features
- Chapter 6, Building Services and Systems
- Chapter 7, Fire and Smoke Protection Features
- Chapter 8, Interior Finish, Decorative Materials and Furnishings
- Chapter 9, Fire Protection and Life Safety Systems
- Chapter 10, Means of Egress
- Chapter 11, Construction Requirements for Existing Buildings
- Chapter 12 Energy Systems
- Chapter 22, Combustible Dust-Producing Operations
- Chapter 23, Motor Fuel-Dispensing Facilities and Repair Garages
- Chapter 24, Flammable Finishes
- Chapter 28, Motor Fuel-Dispensing Facilities and Repair Garages
- Chapter 31, Tents, Temporary Special Event Structures and Other Membrane Structures
- Chapter 32, High-Piled Combustible Storage
- Chapter 33, Fire Safety During Construction and Demolition
- Chapter 38, Higher Education Laboratories
- Chapter 39, Processing and Extraction Facilities
- Chapter 50, Hazardous Materials—General Provisions
- Chapter 51, Aerosols
- Chapter 53, Compressed Gases
- Chapter 57, Flammable and Combustible Liquids
- Chapter 61, Liquefied Petroleum Gases
- Appendix E, Hazard Categories

2018 IFC Chapter 3: General Requirements			
Code Section		Section Title	Description of Change
2018	2015		
Section 314 Modification	Section 314	Indoor Displays	This section is revised to clarify it applies to both liquid-fueled vehicles and gaseous-fueled vehicles. Additionally, it has been modified to allow the Fire Code Official the ability to determine the best method of safeguarding the vehicle regarding the battery and electrical system.
Section 315.3.1 Modification	Section 315.3.1	Ceiling Clearance for Indoor Storages	Exceptions have been added which allow an increase in the height of storage along walls in sprinklered and nonsprinklered buildings.
315.7 Addition		Outdoor Pallet Storage	Requirements are added to the code to height limitation and separation to buildings and property lines for the outdoor storage of idle pallets constructed of wood or plastic. See also Significant Change to Section 2810 for pallet storage at pallet recycling and manufacturing facilities.

2018 IFC Chapter 4: Emergency Planning and Preparedness			
Code Section		Section Title	Description of Change
2018	2015		
403.12.3 Modification		Crowd Managers	The threshold for crowd managers dropped from 1,000 to 500 people for certain events.
404.2.3 Addition		Lockdown Plans	Updates and prescribes details for facility lockdown plans.

2018 IFC Chapter 5: Fire Service Features			
Code Section		Section Title	Description of Change
2018	2015		
510 Modification		Emergency Responder Radio Coverage	Requirements for emergency responder radio coverage have been revised to address industry and equipment enhancements with a new reference to NFPA 1221.

2018 IFC Chapter 6: Building Services and Systems																			
Code Section		Section Title	Description of Change																
2018	2015																		
603.3 Modification	603.3	Fuel-fired Appliances	<p>Fuel oil storage allowances in Section 603 have been revised to clarify applicability to internal combustion engines, such as generators and fire pumps. Fuel oil storage is increased to 1,320 gallons if the building is sprinklered and the tank is listed to UL 142.</p> <p>TABLE 603-1 Maximum Capacity of Fuel Oil Based on Type of Tank and Automatic Sprinkler System Design</p> <table border="1"> <thead> <tr> <th>TANK DESIGN</th> <th>NONSPRINKLERED BUILDING</th> <th>FIRE SPRINKLERS PROVIDED IN THE ROOM</th> <th>FIRE SPRINKLERS PROVIDED IN THE BUILDING</th> </tr> </thead> <tbody> <tr> <td>UL 80</td> <td>660 gallons</td> <td>660 gallons</td> <td>660 gallons</td> </tr> <tr> <td>UL 142</td> <td>660 gallons</td> <td>660 gallons</td> <td>1,320 gallons</td> </tr> <tr> <td>UL 2085</td> <td>660 gallons</td> <td>3,000 gallons</td> <td>3,000 gallons</td> </tr> </tbody> </table>	TANK DESIGN	NONSPRINKLERED BUILDING	FIRE SPRINKLERS PROVIDED IN THE ROOM	FIRE SPRINKLERS PROVIDED IN THE BUILDING	UL 80	660 gallons	660 gallons	660 gallons	UL 142	660 gallons	660 gallons	1,320 gallons	UL 2085	660 gallons	3,000 gallons	3,000 gallons
TANK DESIGN	NONSPRINKLERED BUILDING	FIRE SPRINKLERS PROVIDED IN THE ROOM	FIRE SPRINKLERS PROVIDED IN THE BUILDING																
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UL 142	660 gallons	660 gallons	1,320 gallons																
UL 2085	660 gallons	3,000 gallons	3,000 gallons																
605.13 Addition		Refrigerants with Lower Flammability Hazards	Adds requirements regarding safety concerns for lower flammability refrigerant gases.																
608.3 Modification	608.3	Non-metallic Cooking Oil Storage Tanks	Provide listing and capacity requirements for cooking oil storage.																

2018 IFC Chapter 8: Interior Finish, Decorative Materials and Furnishings			
Code Section		Section Title	Description of Change
2018	2015		
807.1 Modification	807.1	Combustible Decorative Materials	The limitations on decorative combustible materials are clarified as to where they apply.
807.4 Modification	807.4	Combustible Decorative Materials	The limitations on decorative combustible materials are clarified as to where they apply.

2018 IFC Chapter 9: Fire Protection and Live Safety Systems			
Code Section		Section Title	Description of Change
2018	2015		
901.4.6 Addition		Fire Pump and Fire Sprinkler Riser Rooms	Additional requirements have been added for automatic sprinkler system riser rooms and fire pump rooms.
901.6.2 Addition		Integrated Fire Protection System Testing	Test criteria has been added to the code with a reference to NFPA 4 to ensure that where multiple fire protection systems or life safety systems are integrated, that the acceptance process and subsequent testing must evaluate the all of the integrated systems as a whole.
901.8.2 Modification	901.8.2	Removal of Occupant Use Hoselines	Authorizes code official to allow the removal occupant use hoselines.
903.2.1 Clarification	903.2.1	Sprinklers in Group A Occupancies	Clarifies the requirements for fire sprinkler protection in Group A occupancies.
903.2.3 Modification	903.2.3	Sprinklers in Group E Occupancies	Provides occupant load threshold for automatic sprinkler system requirements in Group E occupancies.
903.3.1.1.2 Modification	903.3.1.1.2	Sprinklers in Bathrooms in Group R-4 Occupancies	Removes fire sprinklers requirements from small bathrooms in Group R-4 occupancies.
903.3.1.2.1 Modification	903.3.1.2.1	Sprinklers Beneath Balconies	Correlates automatic sprinkler system requirements in Chapter 9 with Chapter 7 for exterior balconies of Group R occupancies.
903.3.1.2.3 Modification	903.3.1.2.3	Attics	Provides fire protection options for attics in multi-family occupancies
903.3.3 Modification	903.3.3	Sprinkler Obstructions	The code now directs the user to the sprinkler design standard to address sprinkler obstructions.
904.12 Modification	904.12	Commercial Cooking Operations	Directs users to NFPA standards to address sprinkler obstructions.
904.13 Modification	904.13	Domestic Cooking in Institutional Occupancies	Requires automatic fire-extinguishing system to protect domestic cooking appliances in care facilities.

2018 IFC Chapter 9: Fire Protection and Live Safety Systems, Continued			
Code Section		Section Title	Description of Change
2018	2015		
904.14 Modification	904.14	Aerosol Fire-extinguishing System Maintenance	Requires automatic fire suppression in domestic cooking systems in care facilities.
905.3.1 Modification	905.3.1	Class III Standpipes	Establishes standpipe requirements based on stories and addresses standpipes in Groups B and E occupancies.
905.4 Modification	905.4	Class I Standpipe Hose Connections	Allows a modification of hose connection locations for Class I standpipes serving open stairways.
905.11 Modification	905.11	Locking Caps on Standpipe Outlets	This revision authorizes the code official to require locking caps on dry standpipe hose connection outlets.
906.1 Modification	906.1	Portable Fire Extinguishers	Provides schools options for fire extinguisher placement.
907.1.2 Modification	907.1.2	Fire Alarm Construction Documents	Aligns requirements for fire alarm plans and documentation requirements with NFPA 72.
907.2.1 Modification	907.2.1	Fire Alarms in Group A Occupancies	A new fire alarm threshold has been added for Group A occupancies where an occupant load of 100 or more is located on a level other than the level of exit discharge.
907.2.10 Deletion	907.2.10	Group R-4 Fire Alarm System	Fire alarm systems are no longer required in Group R-4 occupancies.
907.5.2.2.4 Modification	907.5.2.2.4	Emergency Voice/Alarm Communication System Captions	Requires automatic fire suppression in domestic cooking systems in care facilities.
910.5 Modification	910.5	Maintenance of Smoke and Heat Removal Equipment	Maintenance and testing frequencies for smoke and heat vents and mechanical smoke removal are specified in the code.
916 Modification	916	Gas Detection Systems	Requirements for gas detection systems are clarified and consolidated in a new Section 916.

2018 IFC Chapter 10: Means of Egress			
Code Section		Section Title	Description of Change
2018	2015		
1004.8 Modification	1004.8	Occupant Load Calculation in Concentrated Business Use Area	The method of calculating occupant load in business areas is revised, which allows for larger occupant loads.
1006.2.1, Table 1006.2.1 Modification	1006.2.1, Table 1006.2.1	1006.2.1, Table 1006.2.1 Spaces with One Exit or Exit Access Doorway	Determination of cumulative occupant loads is clarified and correlated with other code requirements
1006.2.2.6, Table 1006.2.1, Table 1017.2 Addition		Groups R-3 and R-4 Protected with NFPA 13D Sprinkler System	Exit access travel distances are provided for Groups R-3 and R-4 when sprinklered with NFPA 13D sprinkler systems.
1006.3, 1006.3.1 Modification	1006.3, 1006.3.1	Exits on Adjacent Stories	Determining egress requirements has been clarified when the occupants travel to an adjacent story to reach the exit.
1008.2.3 Addition		Illumination of the Exit Discharge	Illumination of exit discharge can now terminate at a safe dispersal area.
1008.3.5, 1008.2.2 Modification	1008.3.5, 1008.2.2	Emergency Illumination in Group I-2	Emergency lighting must meet minimum illumination levels even when one lamp fails in a single luminaire.
1009.7.2 Modification	1009.7.2	Protection of Exterior Areas of Assisted Rescue	The 1-hour fire-resistance-rated separation between an exterior of assisted rescue and the building is not required if the building is protected with an automatic sprinkler system designed to NFPA 13 or 13R.
1010.1.1 Clarification	1010.1.1	Size of Doors	The requirements for the door size are revised to correlate with ICC A117.1.
1010.1.4.4, 1010.1.4.4.1 Modification	1010.1.4.4, 1010.1.4.4.1	Locking Arrangements in Educational Occupancies	Guidance is provided to allow enhanced security measures yet still meet egress requirements on classroom doors.
1010.1.9.8, 1010.1.9.8.1 Modification	1010.1.9.8, 1010.1.9.8.1	Delayed Egress	Guidance is provided to allow enhanced security measures yet still meet egress requirements on classroom doors.
1010.1.9.9, 1010.1.9.10 Clarification	1010.1.9.9, 1010.1.9.10	Electrically Locked Egress Doors	Criteria for electrically locked egress doors have been clarified and correlated.
1010.1.9.12 Modification	1010.1.9.12	Locks on Stairway Doors	The limitation is removed which prohibited locking doors on the stairway side when the stairway was more than four stories, but less than a high-rise.

2018 IFC Chapter 10: Means of Egress, Continued			
Code Section		Section Title	Description of Change
2018	2015		
1010.1.10 Modification	1010.1.10	Panic Hardware and Fire Exit Hardware	Sensor release of electrically locked doors is now allowed on egress doors in Groups A and E. Also, the section is clarified to state that panic hardware or fire exit hardware are only required on swinging doors.
1010.3, 1010.3.1, 1010.3.1.1, 1010.3.2, 1010.3.3, 1010.3.4 Modification	1010.3, 1010.3.1, 1010.3.1.1, 1010.3.2, 1010.3.3, 1010.3.4	Turnstiles	This new section allows security turnstiles, or similar barriers, in the means of egress path.
1011.6 Clarification	1011.6	Stairway Landings	The method of determining the required width and depth of a stairway landing is clarified.
1013.2 Modification	1013.2	Floor Level Exit Signs in Group R-1	The location of low-level exit signs can now be 18 inches above the floor.
1015.6, 1015.7 Modification	1015.6, 1015.7	Fall Arrest for Rooftop Equipment	The specific criteria in the code on fall arrest systems are removed and the ANSI/ASSE Z395.1 standard now governs the installation.
1017.3, 202 Clarification	1017.3, 202	Common Path of Egress Travel	Common path of egress travel must be applied to each room or space on every story.
1023.3.1 Modification	1023.3.1	Stairway Extension	Fire-resistance-rated separation is not required between an interior exit stairway and exit passageways if stairway pressurization is provided.
1023.5, 1024.6 Modification	1023.5, 1024.6	Exit Stairway and Exit Passageway Penetrations	Security system and two-way communication system components are allowed to penetrate the fire-resistant rated enclosure of exit passageways and interior exit stairways and ramps.
1025.1 Modification	1025.1	Luminous Egress Path Marking in Group I Occupancies	Luminous egress path marking is no longer required in high-rise buildings classified as Groups I-2, I-3, and I-4.
1026.4, 1026.4.1 Modification	1026.4, 1026.4.1	Refuge Areas for Horizontal Exits	Guidance is provided to allow enhanced security measures yet still meet egress requirements on classroom doors.
1029.6, 1029.6.3, 1029.7, 202 Modification	1029.6, 1029.6.3, 1029.7, 202	Open-air Assembly Seating	A new term and definition is added for open-air assembly seating.
1029.9.1 Modification	1029.9.1	Minimum Aisle Width	Minimum aisle widths are clarified with a reference added for minimum widths for accessible routes.

2018 IFC Chapter 10: Means of Egress, Continued			
Code Section		Section Title	Description of Change
2018	2015		
1030.1 Modification	1030.1	Emergency Escape and Rescue Openings	Emergency escape and rescue openings are required in Groups R-3 and R 4, and Group R-2 provided with only one means of egress from a story. Also, it is possible to eliminate some, or all, emergency escape and rescue openings from a sprinklered basement.
1030.1.1 Addition		Operation of Emergency Escape and Rescue Openings	Fall prevention devices are allowed on emergency escape and rescue openings provided they comply with ASTM F2090.
1031.1, 1031.10.1, 1031.10.2 Modification	1031.1, 1031.10.1, 1031.10.2	Inspection and Testing of Emergency Egress Lighting	Inspection and testing requirements for emergency egress lighting are relocated into the Chapter 10 Means of Egress and revised to allow self-diagnostics.
1031.2.2 Addition		Locking Arrangements in Existing Educational Occupancies	Guidance is provided to allow enhanced security measures yet still meet egress requirements on classroom doors.
1031.4 Modification	1031.4	Exit Signs in Existing Buildings	The application of exit sign requirements in existing buildings has been clarified for both installation and maintenance.

2018 IFC Chapter 11: Construction Requirements for Existing Buildings			
Code Section		Section Title	Description of Change
2018	2015		
1103.5.1 Addition		Fire Sprinklers in Existing Group A-2 Occupancies	A section has been added to Chapter 11 which requires the retrofit installation of a fire sprinkler system in existing Group A-2 occupancies where alcoholic beverages are consumed if the occupant load is 300 or more.
1103.9 Modification	1103.9	Carbon Monoxide Alarms in Existing Buildings	Carbon monoxide alarms are no longer required to be retroactively installed in existing Groups I-1, I-2, I-4, and R based on occupancy classification. The retroactive installation of carbon monoxide alarms is only required in existing sleeping rooms and dwelling units.
1104.16.2 Modification	1104.16.2	Wall Openings Adjacent to Fire Escapes	Door and window openings within 10 feet of a fire escape must be protected with ¾-hour opening protectives unless the building is sprinklered.
1105.5.4 Addition		Fire-protection-rated Doors in Existing Group I-2	Fire protection rated doors in existing Group I-2 occupancies have three options for automatic closing operations.

2018 IFC Chapter 12: Energy Systems			
Code Section		Section Title	Description of Change
2018	2015		
Chapter 12 Addition		Energy Systems	This chapter is new.
Section 1204.5 Addition		Rapid Shutdown for Solar Photovoltaic Power Systems	Rapid shutdown is required on solar photovoltaic systems to reduce the shock hazard to emergency responders.
1206.2 Modification	1206.2	Stationary Storage Battery Systems	This revision moves the stationary battery storage system requirements from Section 608 to Section 1206.2 and includes new battery technologies and required safety features.

2018 IFC Chapter 22: Combustible Dust-Producing Operations			
Code Section		Section Title	Description of Change
2018	2015		
Chapter 22 Modification		Combustible Dust	Reference to the new NFPA 652, "Standard on the Fundamentals of Combustible Dust", is added to provide guidance and criteria when evaluating combustible dust hazards.

2018 IFC Chapter 23: Motor Fuel-Dispensing Facilities and Repair Garages			
Code Section		Section Title	Description of Change
2018	2015		
2303.2.1 Addition		Height of Emergency Disconnect Switch	This new section provides specific height limitations for emergency disconnect switches for fuel dispensing operations.
2306.7.3.1 Addition		Protection from Vehicle Impact	The fire code official has the authority to require additional vehicle impact protection at fuel dispensing facilities.
2309.6, 2309.6.1 Modification	2309.6, 2309.6.1	Defueling of Hydrogen Fueled Vehicles	The requirements for repairing vehicles fueled by compressed or liquefied compressed gas have been updated to address current technologies and processes.
2311.6 Addition	2311.6	Repair of Vehicles Fueled by CNG and LNG	The requirements for repairing vehicles fueled by compressed or liquefied compressed gas have been updated to address current technologies and processes.
2311.8 Modification	2311.8	Repair of Vehicles Fueled by Lighter-than-air Fuels	The requirements for repairing vehicles fueled by compressed or liquefied compressed gas have been updated to address current technologies and processes.

2018 IFC Chapter 24: Flammable Finishes			
Code Section		Section Title	Description of Change
2018	2015		
2403.2.1.3 Modification	2403.2.1.3	Classified Electrical Areas Around Spray Booths	The size of the classified area around spray booth openings is reduced to 3 feet.
2404.2, 2404.3.1, 2404.3.1.1, 202, 914.9 Modification	2404.2, 2404.3.1, 2404.3.1.1, 202, 914.9	Spray Rooms and Spray Booths	Requirements for spray booths and spray operations are correlated between the IFC and IBC.

2018 IFC Chapter 28: Motor Fuel-Dispensing Facilities and Repair Garages			
Code Section		Section Title	Description of Change
2018	2015		
2810 Addition		Outdoor Storage of Pallets at Pallet Manufacturing and Recycling Facilities	This new section adds criteria for outdoor pallet storage at pallet manufacturing facilities and pallet recycling facilities. It provides specific height limits and separation to property lines and buildings, but also allows for the distances to be modified based on providing additional fire protection features.

2018 IFC Chapter 31: Tents, Temporary Special Event Structures and Other Membrane Structures			
Code Section		Section Title	Description of Change
2018	2015		
Chapter 31 Clarification		Umbrella Structures	A new definition is added for umbrella structures which results in regulation of umbrella structures when they exceed 400 square feet.
3103.3.1 Addition		Tents and Membrane Structures Used as Special Amusement Buildings	Special amusement buildings located in temporary tents are required to be equipped with an automatic sprinkler system.
3103.6, 3103.9, 3103.9.1, 3103.9.2, 3103.9.3 Modification	3103.6, 3103.9, 3103.9.1, 3103.9.2, 3103.9.3	Structural Stability of Tents	Temporary tents and membrane structures are required to provide construction documents which address their structural stability and load carrying capacity. Larger tents and membrane structures have been added to the list of temporary facilities which must comply.
3104.2 Addition		Fabrics for Tents and Membrane Structures	The application of testing criteria for flame spread of tent and membrane structures has been clarified.
3105, 202, 105.6.47, 105.7.22 Addition		Temporary Special Event Structures	The requirements for temporary stage structures are expanded to include all temporary structures greater than 400 square feet when used at special events.
Section 3106 Addition		Outdoor Assembly Events	This section adds requirements specific to outdoor public gatherings and improves the correlation of requirements in the IBC and IFC.
3107.3, 3107.13.1, 3107.13.2, 3107.13.3 Modification		LP-gas Containers and Tanks Adjacent to Tents and Membrane Structures	Requirements for the use and separation of LPgas containers in and around tents and membrane structures have been revised.

2018 IFC Chapter 32: High-Piled Combustible Storage			
Code Section		Section Title	Description of Change
2018	2015		
Modification		Chapter 32 High-piled Combustible Storage	The requirements in the chapter have been updated to correlate with current NFPA 13 requirements and recent FM Global fire tests.

2018 IFC Chapter 33: Fire Safety During Construction and Demolition			
Code Section		Section Title	Description of Change
2018	2015		
3304.5, 3308, 3309.1 Modification	3304.5, 3308, 3309.1	Fire Watch During Construction and Demolition	Criteria for requiring fire watch has been added to the code along with clarification to the functions and duties of the fire watch personnel.

2018 IFC Chapter 38: Higher Education Laboratories			
Code Section		Section Title	Description of Change
2018	2015		
Chapter 38 Addition		Outdoor Assembly Events	A new chapter has been added to the IFC to specifically regulate college and university laboratories. Correlating sections have been added to a new Section 427 in the IBC.

2018 IFC Chapter 39: Processing and Extraction Facilities			
Code Section		Section Title	Description of Change
2018	2015		
Chapter 39 Addition		Plant Processing and Oil Extraction Facilities	A new chapter has been added to the IFC to specifically regulate the process of extracting oils from plant material.

2018 IFC Chapter 50: Hazardous Materials—General Provisions			
Code Section		Section Title	Description of Change
2018	2015		
Table 5003.1.1, Section 202 Modification	Table 5003.1.1, Section 202	Consumer Fireworks	Addresses the explosive nature of Division 1.4G explosives and removes the 100% increase credit for sprinklers where these items are stored.
Table 5003.1.1(1), Table 5003.11.1, Section 6303.1.1.2 Modification	Table 5003.1.1(1), Table 5003.11.1, Section 6303.1.1.2	Maximum Allowable Quantity for Class 3 Oxidizers	The maximum allowable quantity for Class 3 oxidizers is increased by about 10 percent in control areas and Groups M and S occupancies.
5003.8.3.4 Modification	5003.8.3.4	Control Area Construction	Includes Type IV construction in control area fire resistance rating requirements.
5005.1.12 Modification	5005.1.12	Protection of Hazardous Materials Piping Systems	Requirements for leak detection and emergency shutoff for high hazard gases and liquids only applies when the maximum allowable quantity per control area is exceeded.

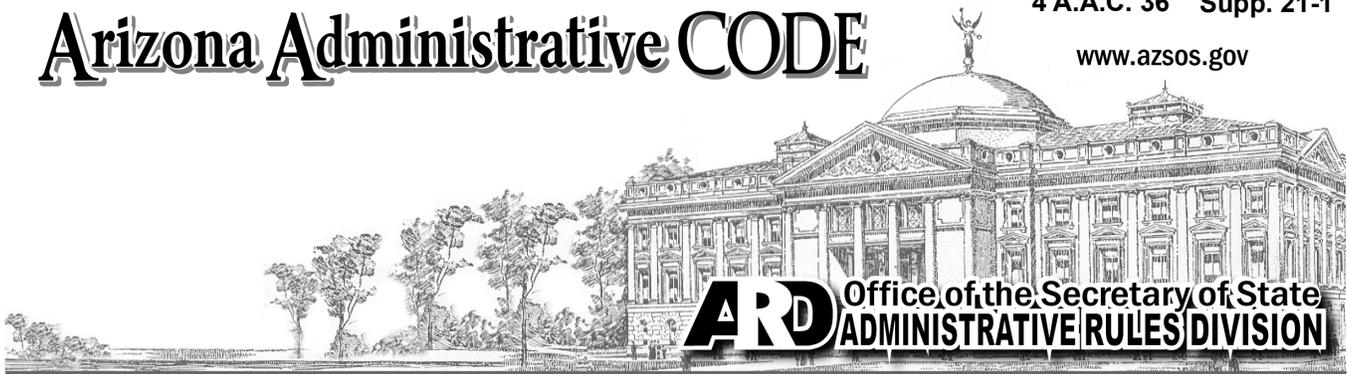
2018 IFC Chapter 51: Aerosols			
Code Section		Section Title	Description of Change
2018	2015		
5103.2, 5103.2.1, 5103.2.3, 5104.1.2, 5104.2.2 Modification	5103.2, 5103.2.1, 5103.2.3, 5104.1.2, 5104.2.2	Aerosol Products in Plastic Containers	Limitations on aerosol products in plastic containers is revised and the use of Plastic Aerosol X products is prohibited in higher life hazard occupancies.
5104.8, 5140.8.1, 5104.8.2, 5103.2.2, 5104.3.3, 5106.2.2 Addition		Aerosol Cooking Spray Products	Specific fire protection requirements are added to address aerosol cooking spray products.

2018 IFC Chapter 53: Compressed Gases			
Code Section		Section Title	Description of Change
2018	2015		
5306.1, 5306.2, 5306.2.1, 5306.2.2, 5306.2 Modification	5306.1, 5306.2, 5306.2.1, 5306.2.2, 5306.2	Medical Gas Storage	Requirements for construction and ventilation of interior medical gas rooms and gas cabinets are revised.
5307.1, 5307.3, 5307.3.1, 5307.3.2 Modification	5307.1, 5307.3, 5307.3.1, 5307.3.2	Liquid Carbon Dioxide Systems for Beverage Dispensing	Requirements for liquefied CO2 in beverage dispensing applications have been correlated with requirements for gas detection systems.
5307.4, 5307.4.1, 5307.4.2, 5307.4.3, 5307.4.4, 5307.4.5, 5307.4.6, 5307.4.7 Addition		Carbon Dioxide Enrichment Systems	Carbon dioxide enrichment systems area regulated by the Fire Code when the system contains more than 100 pounds of CO2, or when the refill connection is remote from the tank or vessel.

2018 IFC Chapter 57: Mobile Fueling Operations			
Code Section		Section Title	Description of Change
2018	2015		
5707 Addition		Mobile Fueling Operations	On-demand mobile fueling is allowed to occur at approved locations and under the control of a permit issued by the fire code official.

2018 IFC Chapter 61: Liquefied Petroleum Gases			
Code Section		Section Title	Description of Change
2018	2015		
Table 6104.3 Modification	Table 6104.3	Location of LP-gas Containers	New Footnote g specifies separations between above-ground LP-gas containers and public ways.

2018 IFC Appendix E Hazard Categories			
Code Section		Section Title	Description of Change
2018	2015		
E102.7.1 Modification	E102.7.1	Hazard Classification of Oxidizers	This change revised the oxidizer classification of sodium dichloro-s-triazinetrione anhydrous (sodium dichloroisocyanurate anhydrous).



TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 36. DEPARTMENT OF FORESTRY AND FIRE MANAGEMENT

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

Laws 2016, Chapter 128 abolished the Department of Fire, Building and Life Safety and divided its duties among the Department of Housing, the State Forester, and the Department of Real Estate. At the request of the State Fire Marshal, the Chapter heading of 4 A.A.C. 36 has been changed to the Department of Forestry and Fire Management. No amendments have been made to this Chapter since supplement 15-4 (Supp. 21-1).

Questions about these rules? Contact:

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The release of this Chapter in Supp. 21-1 replaces Supp. 15-4, 1-5 pages

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

PREFACE

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

Scott Cancelosi, Director
ADMINISTRATIVE RULES DIVISION

RULES

The definition for a rule is provided for under A.R.S. § 41-1001. “‘Rule’ means an agency statement of general applicability that implements, interprets, or prescribes law or policy, or describes the procedures or practice requirements of an agency.”

THE ADMINISTRATIVE CODE

The *Arizona Administrative Code* is where the official rules of the state of Arizona are published. The *Code* is the official codification of rules that govern state agencies, boards, and commissions.

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

Rules are codified quarterly in the *Code*. Supplement release dates are printed on the footers of each chapter.

First Quarter: January 1 - March 31

Second Quarter: April 1 - June 30

Third Quarter: July 1 - September 30

Fourth Quarter: October 1 - December 31

For example, the first supplement for the first quarter of 2019 is cited as Supp. 19-1.

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

AUTHENTICATION OF PDF CODE CHAPTERS

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

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

HOW TO USE THE CODE

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

ARIZONA REVISED STATUTE REFERENCES

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

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

SESSION LAW REFERENCES

Arizona Session Law references in a chapter can be found at the Secretary of State’s website, under Services-> Legislative Filings.

EXEMPTIONS FROM THE APA

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

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

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

Editor’s notes at the beginning of a chapter provide information about rulemaking sections made by exempt rulemaking. Exempt rulemaking notes are also included in the historical note at the end of a rulemaking Section.

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

EXEMPTIONS AND PAPER COLOR

At one time the office published exempt rules on either blue or green paper. Blue meant the authority of the exemption was given by the Legislature; green meant the authority was determined by a court order. In 2001 the Office discontinued publishing rules using these paper colors.

PERSONAL USE/COMMERCIAL USE

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



Administrative Rules Division
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TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 36. DEPARTMENT OF FORESTRY AND FIRE MANAGEMENT

Editor's Note: Laws 2016, Chapter 128 abolished the Department of Fire, Building and Life Safety and divided its duties among the Department of Housing, the State Forester, and the Department of Real Estate. At the request of the State Fire Marshal, the Chapter heading of 4 A.A.C. 36 has been changed to the Department of Forestry and Fire Management. Other than the name change, no amendments have been made to this Chapter since supplement 15-4 (Supp. 21-1).

Editor's Note: The Department of Building and Fire Safety's name was changed to the Department of Fire, Building and Life Safety under the authority of A.R.S. § 41-2141, Laws 2005, Ch. 245, effective June 30, 2006 (Supp. 06-2).

Editor's Note: Chapter 36, formerly the Department of Building and Fire Safety, is now the Department of Fire, Building and Life Safety. This change became effective when the Department of Building and Fire Safety changed its name to the Department of Fire, Building and Life Safety, effective June 30, 2006 (Supp. 06-2).

ARTICLE 1. RESERVED

ARTICLE 2. ARIZONA STATE FIRE CODE

4 A.A.C. 34, Article 11, consisting of Section R4-34-1101, renumbered to A.A.C. R4-36-201 (Supp. 95-4). Introduction and Section number corrected (Supp. 97-4).

Article 11 consisting of Section R4-34-1101 adopted as a permanent rule effective November 16, 1988.

Article 11 consisting of Section R4-34-1101 adopted as an emergency effective March 14, 1988 pursuant to A.R.S. § 41-1026, valid for only 90 days. Emergency expired.

Table with 2 columns: Section, Description. Rows include R4-36-201 (Incorporation by Reference of the International Fire Code) and R4-36-202 (Fees).

ARTICLE 3. INTERNATIONAL FIRE CODE MODIFICATIONS

Article 3, consisting of Sections R4-36-301 through R4-36-311, made by final rulemaking at 13 A.A.R. 449, effective April 7, 2007 (Supp. 07-1).

Article 3, consisting of Sections R4-36-301 through R4-36-308, repealed by summary action with an interim effective date of December 26, 1997; filed in the Office of the Secretary of State December 5, 1997 (Supp. 97-4). Interim effective date corrected Supp. 98-2. Adopted summary rules filed June 5, 1998; interim effective date of December 26, 1997, now the permanent effective

date (Supp. 98-2).

Article 3, consisting of Sections R4-36-301 through R4-36-308, adopted effective November 1, 1995 (Supp. 95-4). Introduction corrected (Supp. 97-4).

Table with 2 columns: Section, Description. Rows include R4-36-301 (Definitions), R4-36-302 (Appendices), R4-36-303 (Permits), R4-36-304 (Inspections and Enforcement), R4-36-305 (General Precautions Against Fire), R4-36-306 (Emergency Planning and Preparedness), R4-36-307 (Fire Service Features), R4-36-308 (Building Services and Systems), R4-36-309 (Fire Protection Systems), R4-36-310 (Explosives and Fireworks), R4-36-311 (Repealed).

ARTICLE 4. PERMISSIBLE CONSUMER FIREWORKS

Article 4, consisting of Sections R4-36-401 through R4-36-403, made by final rulemaking at 17 A.A.R. 107, effective January 11, 2011 (Supp. 11-1).

Table with 2 columns: Section, Description. Rows include R4-36-401 (Material Incorporated by Reference), R4-36-402 (Modification of NFPA 1124), R4-36-403 (Civil Penalties).

CHAPTER 36. DEPARTMENT OF FORESTRY AND FIRE MANAGEMENT

ARTICLE 1. RESERVED

ARTICLE 2. ARIZONA STATE FIRE CODE

R4-36-201. Incorporation by Reference of the International Fire Code

Unless otherwise provided by law, any person residing, doing business, or who is physically present within the state of Arizona shall comply with the provisions of the International Fire Code (2012 Edition), including D102.1 and D107.1 of Appendix D and all provisions of Appendices B, C, E, F, G, H, I, and J, which is published by the International Code Council, incorporated by reference as the State Fire Code, and modified by Article 3. The incorporated material does not include any later amendments or editions. Copies of the International Fire Code are available from the International Code Council, 4051 W. Flossmoor Road, Country Club Hills, IL 60478-5795 and a copy is available for inspection at the Office of the State Fire Marshal.

Historical Note

Adopted as an emergency effective March 24, 1982, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 82-2). Former Section R8-2-41 adopted as an emergency now adopted as a permanent rule effective June 24, 1982 (Supp. 82-3). Adopted as an emergency effective October 12, 1984, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-5). Emergency expired. former Section R8-2-41 repealed, new Section R8-2-41 adopted effective April 2, 1985 (Supp. 85-2). Former Section R8-2-41 repealed, new Section R4-34-1101 adopted as an emergency effective March 14, 1988, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 88-1). Emergency expired. Former Section R8-2-41 repealed, new Section R4-34-1101 adopted as a permanent rule with editorial corrections effective November 16, 1988 (Supp. 88-4). Section R4-34-1101 repealed, new Section adopted effective July 20, 1990 (Supp. 90-3). Section R4-36-201 renumbered from R4-34-1101 (Supp. 95-4). Amended by final rulemaking at 13 A.A.R. 449, effective April 7, 2007 (Supp. 07-1). Amended by final rulemaking at 21 A.A.R. 2973, effective January 2, 2016 (Supp. 15-4).

R4-36-202. Fees

A. Under the authority provided by A.R.S. § 41-2146(D), the State Fire Safety Committee establishes the following schedule of fees:

1. Plan submission fees:
 - a. Each plan submitted: \$210, and
 - b. Each plan supplement submitted or each re-review of a previously submitted plan: \$30;
2. Plan review fees. A separate fee is charged for each system reviewed even if the systems are included in one submitted plan:
 - a. New installation of an automatic fire sprinkler system.
 - i. Servicing less than 10,000 square feet: \$375;
 - ii. Servicing between 10,000 and 50,000 square feet: \$450;
 - iii. For each 50,000 square feet or portion of 50,000 square feet serviced in excess of 50,000 square feet: \$450; and
 - iv. For each floor level serviced above or below the ground-level floor: \$200;
 - b. Modification of an existing automatic fire sprinkler system.
 - i. System consisting of 1 to 20 sprinkler heads: \$75;
 - ii. System consisting of 21 to 50 sprinkler heads: \$100;

- iii. System consisting of 51 to 100 sprinkler heads: \$250;
 - iv. System consisting of 101 to 500 sprinkler heads: \$300;
 - v. For each additional 100 sprinkler heads or portion of 100 sprinkler heads in excess of 500: \$100; and
 - vi. For each floor level serviced above or below the ground-level floor: \$200;
- c. New installation or modification of an extinguishing system using clean agent, halon, dry chemical, carbon dioxide, or other extinguishing material:
 - i. Servicing up to 5,000 square feet: \$200; and
 - ii. For each 5,000 square feet or portion of 5,000 square feet serviced in excess of 5,000 square feet: \$50;
 - d. New installation of one automatic hood extinguishing system: \$150;
 - e. Modification of one existing automatic hood extinguishing system: \$75;
 - f. New installation of a fire pump:
 - i. For the first fire pump: \$250; and
 - ii. For each additional fire pump: \$150;
 - g. Modification of one existing fire pump: \$100;
 - h. New installation or modification of underground fire line and hydrants:
 - i. System consisting of up to 500 lineal feet: \$300; and
 - ii. For each 500 lineal feet or portion of 500 lineal feet in excess of 500 lineal feet: \$175;
 - i. New installation of standpipe system:
 - i. System consisting of up to four standpipes: \$200; and
 - ii. For each four standpipes or portion of four standpipes in excess of four: \$100;
 - j. Modification of standpipe system: \$50;
 - k. New installation of a fire alarm system:
 - i. Servicing up to 1,000 square feet: \$225;
 - ii. Servicing between 1,001 and 2,000 square feet: \$300;
 - iii. Servicing between 2,001 and 10,000 square feet: \$450;
 - iv. Servicing between 10,001 and 50,000 square feet: \$500;
 - v. For each 50,000 square feet or portion of 50,000 square feet serviced in excess of 50,000 square feet: \$200;
 - vi. For each floor level serviced above or below the ground-level floor: \$200; and
 - vii. For smoke detection throughout serviced area: 50% increase in fee calculated under subsections (A)(2)(k)(i) through (A)(2)(k)(vi); and
 - l. Modification of a fire alarm system by adding:
 - i. One to five fire alarm devices: \$100; and
 - ii. Six or more fire alarm devices: \$150;
3. Permit issuance fees:
 - a. Fire protection permit: \$30 per system permitted;
 - b. Underground liquid fuel storage tank: \$164;
 - c. Tire storage: \$82;
 - d. Above-ground liquid fuel storage tank: \$164;
 - e. Pyrotechnics: \$164;
 - f. Special-event tent: \$164;
 - g. Hydrogen fuel cell: \$164;
 - h. Fair or trade show: \$164;
 - i. Explosives or blasting storage: \$164;
 - j. Compressed gases: \$164;

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- k. Cryogenics: \$164; and
- l. Liquefied petroleum tank: \$164; and
- 4. Re-inspection fees: If the State Fire Marshal has to conduct a re-inspection because an entity failed to cancel or was not prepared for a previously scheduled inspection or because the site failed the inspection, the State Fire Marshal shall charge a minimum of \$164 for the re-inspection. The State Fire Marshal shall increase the minimum re-inspection fee by \$82 for each 25 miles or portion of 25 miles in excess of the first 25 miles required to travel to and from the site of the re-inspection.
- B. The State Fire Safety Committee shall authorize the State Fire Marshal to refund any fee paid under this Section if:
 - 1. The permit holder applies for a refund on a form furnished by the State Fire Marshal no more than 180 days after the fee is paid; and
 - 2. The State Fire Marshal determines that the fee paid was erroneous.

Historical Note

New Section made by final rulemaking at 14 A.A.R. 2829, effective August 30, 2008 (Supp. 08-3).

Editor's Note: Article 3, consisting of Sections R4-26-301 through R4-36-308, repealed by summary action with an interim effective date of December 26, 1997. Historical notes in this Article were corrected for clarification in Supp. 98-2. Adopted summary rules filed June 5, 1998; interim effective date of December 26, 1997, now the permanent effective date (Supp. 98-2).

ARTICLE 3. INTERNATIONAL FIRE CODE MODIFICATIONS**R4-36-301. Definitions**

The following terms apply to the State Fire Code established in this Chapter:

1. Wherever the terms "fire chief" or "fire code official" are used in the International Fire Code, these terms include the State Fire Marshal or the State Fire Marshal's designated representative, unless the context otherwise requires.
2. Wherever the terms "fire department" or "department of fire prevention" are used in the International Fire Code, these terms include the State Fire Marshal or the State Fire Marshal's designated representative unless the context otherwise requires.
3. Section 202, the definition of Occupancy Classification for R-3 within the Residential Group is modified to read: Residential occupancies where the occupancies are primarily permanent in nature and not classified as R-1, R-2, R-4, or I including:
 - a. Boarding houses (non-transient) with 16 or fewer occupants
 - b. Boarding houses (transient) with 10 or fewer occupants
 - c. Building that do not contain more than four dwelling units
 - d. Care facilities that provide accommodations for five or fewer persons receiving care
 - e. Congregate living facilities (non-transient) with 16 or fewer occupants
 - f. Congregate living facilities (transient) with 10 or fewer occupants
 - g. Care facilities within a dwelling. Care facilities for five or fewer persons receiving care that are within a single-family dwelling are permitted to comply with the *International Residential Code* provided an automatic sprinkler system is installed in accordance

with Section 903.3.1.3 or Section P2904 of the *International Residential Code*.

Historical Note

Adopted effective November 1, 1995 (Supp. 95-4). R4-36-301 repealed by summary action with an interim effective date of December 26, 1997; filed in the Office of the Secretary of State December 5, 1997 (Supp. 97-4). Adopted summary rules filed June 5, 1998; interim effective date of December 26, 1997, now the permanent effective date (Supp. 98-2). New Section made by final rulemaking at 13 A.A.R. 449, effective April 7, 2007 (Supp. 07-1). Amended by final rulemaking at 21 A.A.R. 2973, effective January 2, 2016 (Supp. 15-4).

R4-36-302. Appendices

The International Fire Code (2012 Edition), which is incorporated by reference at R4-36-201, is modified as shown in Exhibit A.

EXHIBIT A. INCORPORATED APPENDICES

Section 101.2.1 The following appendices are adopted as part of this Code:

- B: Fire-Flow Requirements for Buildings
- C: Fire Hydrant Locations and Distribution
- D102.1 or the minimum requirement of the local fire response agency
- D107.1 or the minimum requirement of the local building or subdivision authority
- E: Hazard Categories
- F: Hazard Ranking
- G: Cryogenic Fluids – Weight and Volume Equivalents
- H: Hazardous Materials Management Plan (HMMP) and Hazardous Materials Inventory Statement (HMIS) Instructions
- I: Fire Protection Systems – Noncompliant Conditions
- J: Building Information Sign

Historical Note

Adopted effective November 1, 1995 (Supp. 95-4). R4-36-302 repealed by summary action with an interim effective date of December 26, 1997; filed in the Office of the Secretary of State December 5, 1997 (Supp. 97-4). Adopted summary rules filed June 5, 1998; interim effective date of December 26, 1997, now the permanent effective date (Supp. 98-2). New Section made by final rulemaking at 13 A.A.R. 449, effective April 7, 2007 (Supp. 07-1). Amended by final rulemaking at 21 A.A.R. 2973, effective January 2, 2016 (Supp. 15-4).

R4-36-303. Permits

- A. The following time-frames are established for permits issued under the State Fire Code:
 1. The Office of the State Fire Marshal shall determine within five business days after receipt of a permit application and plan submission whether the permit application and plan are administratively complete and ready for review.
 2. The Office of the State Fire Marshal shall either grant or deny the permit within 60 calendar days after the documents are determined to be administratively complete.
 3. A permittee shall commence work within 180 days after the permit is issued or apply in writing for an extension from the State Fire Marshal. Without an extension, the permit is valid only for 180 days from the date of issuance.

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- B.** The holder of an operational or construction permit is entitled to inspections as prescribed in this Chapter. The Office of the State Fire Marshal shall invoice a re-inspection caused by a violation or cancellation without 24-hours' notice at a rate established in the fee schedule and shall not conduct the re-inspection until the fee is paid.
- C.** Section 105.1.1 is modified to read: Permits required. Any property owner or authorized agent that intends to conduct an operation or business, install or modify systems and equipment that are regulated by this code, or cause any such work to be done, shall first make application to the fire code official and obtain the required permit. The fire code official is authorized to waive the requirement for any permit listed in sections 105.6.1 through 105.6.46 and 105.7.1 through 107.16.
- D.** Section 105.1.2 is modified to read: Types of permits. There shall be two types of permits as follows:
1. Operational permit. An operational permit allows the applicant to conduct an operation for which a permit is required by Section 105.6 for a period that does not exceed 180 days from the date of issuance.
 2. Construction permit. A construction permit allows the applicant to install or modify systems and equipment for which a permit is required by Section 105.7.
- E.** Section 105.2.4, the first sentence is modified to read: The fire code official shall examine or cause to be examined each application for a permit or a permit amendment.
- F.** Section 105.3.1, the first sentence is modified to read: An operational permit shall remain in effect until reissued, renewed, or revoked or for 180 days.
- G.** Section 105.3.3 is modified to read: Occupancy prohibited before approval. The building or structure shall not be occupied prior to the fire code official issuing a report indicating that applicable provisions of this code have been met.
- C.** Section 111.2 is modified to read: Issuance. The State Fire Marshal shall issue a stop work order, referred to in statute as a cease and desist order, in accordance with A.R.S. § 41-2196.
- D.** Section 111.4 is modified to read: Failure to Comply. Any person who shall continue any work having been served with a stop work order, except such work as that person is directed to perform to remove a violation or unsafe condition, is subject to the provisions of A.R.S. § 41-2196.

Historical Note

Adopted effective November 1, 1995 (Supp. 95-4). R4-36-304 repealed by summary action with an interim effective date of December 26, 1997; filed in the Office of the Secretary of State December 5, 1997 (Supp. 97-4). Adopted summary rules filed June 5, 1998; interim effective date of December 26, 1997, now the permanent effective date (Supp. 98-2). New Section made by final rulemaking at 13 A.A.R. 449, effective April 7, 2007 (Supp. 07-1). Amended by final rulemaking at 21 A.A.R. 2973, effective January 2, 2016 (Supp. 15-4).

R4-36-305. General Precautions Against Fire

- A.** Section 307.2 is modified to read: Permit required. When required by the fire code official, a permit shall be obtained in accordance with Section 105.6 before kindling a fire for recognized silvicultural or range or wildlife management practices, prevention or control of disease or pests, or a bonfire. Application for the required permit shall only be made by and a permit issued to the owner of the land upon which the fire is to be kindled.
- B.** Section 311.1.1 is modified to read: Abandoned premises. Buildings, structures, and premises for which an owner cannot be identified or located by dispatch of a certificate of mailing to the last known or registered address, which persistently or repeatedly become unprotected or unsecured, which have been occupied by unauthorized persons or for illegal purposes, or which present a danger of structural collapse or fire spread to adjacent properties shall be considered abandoned, declared unsafe, and abated in accordance with state law.

Historical Note

Adopted effective November 1, 1995 (Supp. 95-4). R4-36-305 repealed by summary action with an interim effective date of December 26, 1997; filed in the Office of the Secretary of State December 5, 1997 (Supp. 97-4). Adopted summary rules filed June 5, 1998; interim effective date of December 26, 1997, now the permanent effective date (Supp. 98-2). New Section made by final rulemaking at 13 A.A.R. 449, effective April 7, 2007 (Supp. 07-1). Amended by final rulemaking at 21 A.A.R. 2973, effective January 2, 2016 (Supp. 15-4).

R4-36-306. Emergency Planning and Preparedness

Section 401.1 is modified to read: Scope. Reporting of emergencies, coordination with the local authorized emergency response providers, emergency plans, and procedures for managing or responding to emergencies shall comply with the provisions of this Section.

Historical Note

Adopted effective November 1, 1995 (Supp. 95-4). R4-36-306 repealed by summary action with an interim effective date of December 26, 1997; filed in the Office of the Secretary of State December 5, 1997 (Supp. 97-4). Adopted summary rules filed June 5, 1998; interim effective date of December 26, 1997, now the permanent effective date (Supp. 98-2). New Section made by final rulemaking at 13 A.A.R. 449, effective April 7, 2007 (Supp. 07-1).

Historical Note

Adopted effective November 1, 1995 (Supp. 95-4). R4-36-303 repealed by summary action with an interim effective date of December 26, 1997; filed in the Office of the Secretary of State December 5, 1997 (Supp. 97-4). Adopted summary rules filed June 5, 1998; interim effective date of December 26, 1997, now the permanent effective date (Supp. 98-2). New Section made by final rulemaking at 13 A.A.R. 449, effective April 7, 2007 (Supp. 07-1). Amended by final rulemaking at 14 A.A.R. 2829, effective August 30, 2008 (Supp. 08-3). Amended by final rulemaking at 21 A.A.R. 2973, effective January 2, 2016 (Supp. 15-4).

R4-36-304. Inspections and Enforcement

- A.** Section 108.1 is modified to read: Board of appeals established. To hear and decide appeals of orders, decisions, or other determinations made by the fire code official regarding application or interpretation of this code, the authority having jurisdiction may establish a board of appeals. If established, the board of appeals shall be appointed by and hold office at the pleasure of the governing body. The fire code official shall be an ex officio member of the board of appeal with no vote on any matter before the board. The board of appeals shall adopt rules of procedure for conducting its business. The board of appeals shall provide a written copy of the findings and decision in an appeal to the appellant and fire code official.
- B.** Section 109.4 is modified to read: Violation penalties. If a person violates a provision of this code or fails to comply with any of the requirements of the code, the State Fire Marshal shall proceed in accordance with A.R.S. § 41-2196.

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R4-36-307. Fire Service Features

- A. Section 501.2 is modified to read: Permits. A permit shall be required as set forth in Sections 105.6 and 105.7 as modified by this Article.
- B. Section 508.1.1 is modified to read: Location and access. The location and accessibility of the fire command center shall be approved by a local authorized emergency response provider.

Historical Note

Adopted effective November 1, 1995 (Supp. 95-4). R4-36-307 repealed by summary action with an interim effective date of December 26, 1997; filed in the Office of the Secretary of State December 5, 1997 (Supp. 97-4). Adopted summary rules filed June 5, 1998; interim effective date of December 26, 1997, now the permanent effective date (Supp. 98-2). New Section made by final rulemaking at 13 A.A.R. 449, effective April 7, 2007 (Supp. 07-1). Amended by final rulemaking at 21 A.A.R. 2973, effective January 2, 2016 (Supp. 15-4).

R4-36-308. Building Services and Systems

- A. Section 606.2 is modified to read: Refrigerants. The use and purity of new, recovered, and reclaimed refrigerants shall be in accordance with state law.
- B. Section 606.14 is modified to read: Notification of refrigerant discharges. The fire department shall be notified immediately when a discharge becomes reportable under state, federal, or local regulations in accordance with Section 5003.3.1.
- C. Sections 5003.3.1 and 5003.3.1.4 replace "fire code official" with "fire department."

Historical Note

Adopted effective November 1, 1995 (Supp. 95-4). R4-36-308 repealed by summary action with an interim effective date of December 26, 1997; filed in the Office of the Secretary of State December 5, 1997 (Supp. 97-4). Adopted summary rules filed June 5, 1998; interim effective date of December 26, 1997, now the permanent effective date (Supp. 98-2). New Section made by final rulemaking at 13 A.A.R. 449, effective April 7, 2007 (Supp. 07-1). Amended by final rulemaking at 21 A.A.R. 2973, effective January 2, 2016 (Supp. 15-4).

R4-36-309. Fire Protection Systems

Section 901.1 is modified to read: Scope. The provisions of this Chapter shall specify where fire protection systems are required and shall apply to the design, installation, inspection, operation, testing, and maintenance of all fire protection systems. Absent specific statutory authority to the contrary, these provisions provide the minimum protective standards relating to fire protection systems.

Historical Note

New Section made by final rulemaking at 13 A.A.R. 449, effective April 7, 2007 (Supp. 07-1). Amended by final rulemaking at 21 A.A.R. 2973, effective January 2, 2016 (Supp. 15-4).

R4-36-310. Explosives and Fireworks

Section 5601.1.3 is modified to read: Fireworks. The possession, manufacture, storage, sale, handling, and use of fireworks are prohibited. Exceptions:

1. Storage and handling of fireworks as allowed in Section 5604.
2. Manufacture, assembly and testing of fireworks as allowed in Section 5605.

3. The use of fireworks for fireworks displays as allowed in Section 5608.
4. The possession, storage, sale, handling and use of specific types of Division 1.4G fireworks where allowed by A.R.S. Title 36, Chapter 13, Article 1 or local ordinances and regulations, provided the fireworks comply with 16 CFR Parts 1500 and 1507 and 49 CFR Parts 100-185, for consumer fireworks.

Historical Note

New Section made by final rulemaking at 13 A.A.R. 449, effective April 7, 2007 (Supp. 07-1). Amended by final rulemaking at 21 A.A.R. 2973, effective January 2, 2016 (Supp. 15-4).

R4-36-311. Repealed**Historical Note**

New Section made by final rulemaking at 13 A.A.R. 449, effective April 7, 2007 (Supp. 07-1). Section repealed by final rulemaking at 21 A.A.R. 2973, effective January 2, 2016 (Supp. 15-4).

ARTICLE 4. PERMISSIBLE CONSUMER FIREWORKS**R4-36-401. Material Incorporated by Reference**

As required by A.R.S. § 36-1609(A), the State Fire Marshal incorporates by this reference NFPA 1124, Code for the Manufacture, Transportation, Storage and Retail Sales of Fireworks and Pyrotechnic Articles, 2013 edition as published August 29, 2012, which is published by the National Fire Protection Association, 1 Batterymarch Park, P.O. Box 9101, Quincy, MA 02169-7471 and is available from NFPA at www.nfpa.org and the Office of the State Fire Marshal. The incorporated material does not include a later amendment or edition but is modified as specified in R4-36-402.

Historical Note

New Section made by final rulemaking at 17 A.A.R. 107, effective January 11, 2011 (Supp. 11-1). Amended by final rulemaking at 21 A.A.R. 571, effective June 7, 2015 (Supp. 15-2).

R4-36-402. Modification of NFPA 1124

- A. Whenever the term "Consumer fireworks" is used in NFPA 1124, substitute the term "Consumer firework" as defined at A.R.S. § 36-1601(1).
- B. Whenever the term "Display fireworks" is used in NFPA 1124, substitute the term "Display firework" as defined at A.R.S. § 36-1601(2).
- C. Whenever the term "Fireworks" is used in NFPA 1124, substitute the term "Fireworks" as defined at A.R.S. § 36-1601(3).

Historical Note

New Section made by final rulemaking at 17 A.A.R. 107, effective January 11, 2011 (Supp. 11-1).

R4-36-403. Civil Penalties

- A. Under the authority provided by A.R.S. § 36-1610, the State Fire Marshal shall impose a civil penalty of \$1,000 for each incident of prohibited use of fireworks on state land when the State Fire Marshal determines that the incident of prohibited use of fireworks posed a risk of harm to life or property.
- B. As used in A.R.S. § 36-1610 and subsection (A), an incident of prohibited use of fireworks means the combustion, explosion, deflagration, or detonation of a single firework device.

Historical Note

New Section made by final rulemaking at 17 A.A.R. 107, effective January 11, 2011 (Supp. 11-1).

Article 1 **Arizona Department of Forestry and Fire Management**

37-1301. Arizona department of forestry and fire management; state forester; appointment; qualifications

A. The Arizona department of forestry and fire management is established to provide for land management and the prevention and suppression of wildland fires on state land and on private property located outside of cities and towns.

B. The governor shall appoint a state forester pursuant to section 38-211. The state forester serves at the pleasure of the governor. The state forester is responsible for the direction, operation and control of the Arizona department of forestry and fire management.

C. The qualifications of the state forester shall be either of the following:

1. Graduation from a full four-year college course with a bachelor's degree, with a major in forestry, including five years of technical experience in the forestry-land management field.
2. Ten years of successful and progressive technical experience in forestry and land management activities of such a nature as to enable the applicant to perform the duties of the state forester successfully at the professional level.

37-1302. Powers and duties of state forester; rules; legislative presentation; acceptance of federal law

A. The state forester is designated as the agent of the state of Arizona and shall administer this chapter. The state forester shall:

1. Exercise and perform all powers and duties vested in or imposed on the Arizona department of forestry and fire management.
2. Adopt rules necessary to discharge the powers and duties of the Arizona department of forestry and fire management, including rules that create efficiencies, protect the public health and safety and prescribe budgetary obligations.
3. Subject to title 41, chapter 4, article 4, appoint an assistant director to the office of the state fire marshal, a state fire training officer and a state fire resource coordinator, all of whom serve at the pleasure of the state forester.
4. Subject to title 41, chapter 4, article 4, employ, determine the terms and conditions of employment of and prescribe the duties and powers of administrative, professional, technical, secretarial, clerical and other persons as may be necessary in the performance of the Arizona department of forestry and fire management's duties. The compensation of department employees shall be as determined pursuant to section 38-611.

5. Contract for the services of outside advisors, consultants and aides as may be reasonably necessary.
6. Perform all management and administrative functions assigned or delegated to this state by the United States relating to forestry and financial assistance and grants relating to forestry.
7. Identify sources of information relating to forest management, including wildfire prevention, mitigation, suppression and recovery and administrative and judicial appeals and litigation with respect to timber sales and forest thinning projects in this state, and develop procedures for compiling and distributing that information.
8. Take necessary action to maximize state fire assistance grants, including establishing timelines for using grant monies and reallocating lapsed grant monies to other projects.
9. Conduct education and outreach in forest communities by explaining the wildfire threat to private property caused by the lack of timber harvesting, forest thinning, land management and watershed protection and enhancement.
10. Monitor and conduct forestry projects and wildfire prevention, mitigation and suppression activities.
11. Assist in the development of the forestry products industry in this state.
12. Intervene on behalf of this state and its citizens in administrative and judicial appeals and litigation that challenge governmental efforts supported by the state forester if the state forester determines that intervention is in the best interests of this state.
13. Annually develop and implement a comprehensive statewide wildfire response plan for the deployment of state, county, municipal, fire district, volunteer fire association and private fire service provider contract resources to wildfire suppression activities. The statewide wildfire response plan shall take into account anticipated fire conditions and fire severity and may include repositioning resources as necessary. The state forester shall consult with federal land management firefighting agencies, state and county emergency agencies, municipal fire departments, fire districts, statewide fire district and statewide fire chiefs associations, volunteer fire departments and private fire contractors in the development of the comprehensive statewide wildfire response plan, the implementation of standards for training and certification for all classes of wildland fire and hazard personnel and the implementation of standards for wildland fire apparatus and equipment that are deployed under cooperative agreements with the state forester.
14. Provide necessary oversight to ensure standardized training and certification for all classifications of firefighters to be deployed to any incident.
15. Develop recommendations for minimum standards for safeguarding life and property from wildland fires and fire hazards, preventing wildland fires and alleviating fire hazards.

16. Develop recommendations for minimum standards for the storage, sale, distribution and use of dangerous chemicals, combustibles, flammable liquids, explosives and radioactive materials in wildland-urban interface areas.

17. Consult with the department of public safety, the department of emergency and military affairs and local governments regarding the establishment of fire evacuation routes and community alert systems.

18. Make recommendations for minimum standards for the creation of defensible spaces in and around wildland-urban interface areas as authorized by existing county and municipal laws and ordinances.

B. During the first regular session of each legislature, the state forester shall present information to the legislative committees with jurisdiction over forestry issues. The state forester shall collaborate with, and invite the participation of, relevant state, federal and local governmental officers and agencies. A written report is not required, but the presentation shall include information concerning:

1. Forestry management, including the current conditions of the forests in this state on federal, state and private property as affected by federal, state and local public policies, climatic conditions, wildfire hazards, pest infestations, overgrowth and overgrowth control policies and methods and the effects of current federal policy on forest management and impacts on forest land management.

2. The wildland-urban interface, including the effects of county and municipal zoning policies and wildfire hazards on public and private property.

3. Wildfire emergency management and all hazard response issues, including:

(a) Intergovernmental and interagency primacy, cooperation, coordination, roles and training of federal, state and local forestry, firefighting and law enforcement agencies.

(b) Channels and methods of communicating emergency information to the public.

(c) The roles of governmental and nongovernmental disaster relief agencies and organizations.

(d) The level of federal, state and local emergency funding.

C. The state forester may:

1. Furnish technical advice to the people of this state on forestry and land management matters.

2. Do all other acts necessary to take advantage of and carry out the provisions of the act of Congress described in subsection D of this section.

D. This state accepts the provisions of the cooperative forestry assistance act of 1978 (P.L. 95-313; 92 Stat. 365; 16 United States Code chapter 41) providing for federal forestry assistance programs to states.

37-1303. Suppression of wildfires; powers and duties of state forester; entry on private lands

A. The state forester shall have authority to prevent, manage or suppress any wildfires on state and private lands located outside incorporated municipalities and, if subject to cooperative agreements, on other lands located in this state or in other states, Mexico or Canada. If there is no cooperative agreement, the state forester may furnish wildfire suppression services on any lands in this state if the state forester determines that suppression services are in the best interests of this state and are immediately necessary to protect state lands.

B. In exercising the authority to prevent, manage or suppress wildfires, if the state forester declares a prohibition on fire-causing activities and fireworks, the state forester shall post a notice of the action on the state forester's website and provide a copy of the notice to the news media and the original declaration to the Arizona state library, archives and public records. The notice shall clearly state the types of prohibited activities, where they are prohibited and whether permits that are issued by other governmental entities are affected by the action.

C. The state forester may request the governor to declare a wildland fire emergency pursuant to section 35-192. If liabilities are authorized under both sections 35-192 and 37-1305, the authorization under section 37-1305 must be exhausted before any liabilities may be incurred under section 35-192.

D. The state forester may enter into cooperative agreements with other state and federal agencies, departments and political subdivisions and any person for:

1. Prevention and suppression of wildfires.

2. Assistance with fire and nonfire national and state emergencies and multiagency logistical support in this state and other states.

3. Activities pursuant to the wildfire suppression assistance act (P.L. 101-11; 103 Stat. 15; 42 United States Code sections 1856m through 1856o) in Mexico and Canada.

E. The state forester may enter private lands in performing the duties under this section.

F. The state forester may enter into agreements to utilize private landowners' equipment and personnel if the fire is on or adjacent to such private landowners' property.

G. Within a wildfire management area, the state forester or the designated wildfire incident commander is not responsible for the safety or actions of any person or private entity contracted to provide wildfire protection services for private property.

37-1304. Forestry administrative districts; equipment and personnel

A. The state forester may establish state forestry administrative districts in all eligible areas of this state.

B. The state forester shall establish an equipment program in order to supply the forestry administrative districts. Equipment shall be supplied through both the federal excess property program and purchases of new equipment when warranted.

C. Subject to title 41, chapter 4, article 4, the state forester may hire personnel in each such district or other most practical area based upon need and workload.

D. The state forester may:

1. Hire personnel and rent equipment on a temporary basis in order to monitor and suppress wild land fires occurring on state and private lands within any of the forestry administrative districts.

2. Cooperate with other federal, state and local government agencies and any person to establish a reserve of personnel and equipment which may be utilized when needed to suppress wild land fires.

3. Adopt rules necessary to carry out the provisions of this subsection which shall be exempt from existing advertising and certification procedures.

37-1305. Emergencies; prohibiting fireworks; liabilities and expenses; fire suppression revolving fund

A. On request of the state forester, the governor may authorize the state forester to incur liabilities for suppressing wildland fires and responding to other unplanned all-risk activities from unrestricted monies in the state general fund whether or not the legislature is in session.

B. The state forester has the authority to prohibit the use of fireworks during times of high fire potential in the unincorporated areas of the state.

C. The state forester or the state forester's designee shall review all liabilities incurred and expenditures made under this section and shall report the expenditures to the department of administration for audit according to department of administration rules. The state forester shall transmit a copy of the report to the state emergency council.

D. Liabilities incurred under this section are subject to the following limitations:

1. Wildland fire suppression or other unplanned all-risk emergency liabilities shall not exceed three million dollars of state general fund monies pursuant to subsection A of this section in a fiscal year for costs associated with suppressing wildland fires, supporting other unplanned all-risk activities such as fire, flood, earthquake, wind and hazardous material responses and preparing for periods of extreme fire danger and pre-position equipment and other fire suppression resources to provide for enhanced initial attack on wildland fires. The state forester shall not incur nonreimbursable liabilities for support of nonfire all-risk activities. The governor

shall determine when periods of extreme fire danger exist and must approve any expenditure for pre-positioning activities.

2. If the funding authorization in paragraph 1 of this subsection is exhausted, or if the nonreimbursable liabilities incurred exceed the cash balance of the fire suppression revolving fund, the state forester shall not incur additional liabilities without the consent of a majority of the state emergency council as authorized by section 35-192.

E. The state forester shall process and pay claims for reimbursement for wildland fire suppression services, including claims for personnel hours, used supplies and reasonable and negotiated costs of damage to equipment that exceeds normal wear and tear, as follows:

1. Except as provided by paragraph 2 of this subsection, within thirty days after receiving a complete and correct claim for wildland fire suppression services, the state forester shall pay the claim from available monies that have not been committed to the payment of other wildfire expenses.

2. Within thirty days after receiving a complete and correct claim for wildland fire suppression services on federal lands, the state forester shall complete the processing of the claim and forward the claim to the appropriate federal agency.

3. For any valid claim other than for federal reimbursement, if there is insufficient funding in the fire suppression revolving fund, the holder of the unpaid claim shall be issued a certificate pursuant to section 35-189.

4. For any valid claim for federal reimbursement, the state forester shall certify the claim to the state treasurer who shall pay the claim, including claims for personnel hours, used supplies and reasonable and negotiated costs of damage to equipment that exceeds normal wear and tear, from monies appropriated from the budget stabilization fund pursuant to section 35-144, subsection A, paragraph 3. The state forester shall reimburse the state treasurer within forty-five days after payment of the claim by a federal agency and the state treasurer shall deposit those monies in the budget stabilization fund established by section 35-144.

F. Monies received for suppressing wildland fires, pre-positioning equipment and firefighting resources and other unplanned all-risk activities may be used for the purposes of section 37-1303 and this section.

G. The state forester shall adopt rules for administering the wildland fire suppression monies authorized under this section, subject to approval of the governor.

H. The state forester may require reimbursement from cities and other political subdivisions of this state and state and federal agencies for costs incurred in the suppression of wildland fires, pre-suppression or unplanned all-risk activities. Reimbursement shall be based on the terms and conditions in cooperative agreements, land ownership or negligence. The state forester may require reimbursement from individuals or businesses only for costs incurred in the suppression of wildland fires or unplanned all-risk activities caused by their negligence or criminal acts.

I. The fire suppression revolving fund is established consisting of civil penalties collected pursuant to section 36-1610 and monies received by the state forester for wildland fire suppression and pre-positioning equipment and resources and for payment for activities related to combating wildland fires and supporting other unplanned all-risk activities such as fire, flood, earthquake, wind and hazardous material responses. The state forester shall not incur nonreimbursable liabilities for support of nonfire all-risk activities. The state forester shall administer the fund, and all monies received for these activities shall be deposited, pursuant to sections 35-146 and 35-147, in the fund. Monies in the fire suppression revolving fund are continuously appropriated to the state forester, except that if the unobligated balance of the fund exceeds two million dollars at the end of any calendar year, the excess shall be transferred to the state general fund. Monies in the fire suppression revolving fund are otherwise exempt from the provisions of section 35-190 relating to lapsing of appropriations.

37-1306. Cooperative forestry fund

A. The cooperative forestry fund is established. The state forester shall administer the fund.

B. Except as otherwise provided in this chapter, the state forester shall deposit, pursuant to sections 35-146 and 35-147, in this fund all monies appropriated to this fund and monies received from individuals, businesses, cities and towns, counties, other political subdivisions of this state, other state agencies, federal agencies and any other sources.

C. Monies in the fund are continuously appropriated for the purpose of conducting the activities of the state forester.

D. Monies in the fund are exempt from the provisions of section 35-190 relating to lapsing of appropriations.

37-1307. State fire safety committee; members; terms; powers and duties; compensation; fire watch requirements

A. The state fire safety committee is established consisting of nine members who are appointed for three-year terms by the governor pursuant to section 38-211. The governor may remove any member from the committee for incompetency, improper conduct, disability or neglect of duty. Membership on the committee is as follows:

1. Two members, not from the same municipality, each of whom is a fire chief or fire marshal of a paid municipal fire department of a city with a population of one hundred thousand persons or more.

2. One member who is a fire chief of a paid municipal fire department of a town with a population of less than one hundred thousand persons.

3. One member who is a fire chief in a fire district of an unincorporated area in a county with a population of less than five hundred thousand persons.

4. One member who is a member of the Arizona fire chiefs association.

5. One member who is a registered architect.

6. One member who is a chief building official of a city, town or county.

7. One member who is a member of the public.

8. One member who is a member of the public and who is engaged in the business of distributing, selling or providing liquefied petroleum gas to consumers.

B. The state fire safety committee shall annually select from its membership a chairperson for the committee. The committee shall meet on the call of the chairperson or on the request of at least five members.

C. The state fire safety committee shall advise the office of the state fire marshal on all of the following:

1. The adoption of a state fire code.

2. The adoption of a fee schedule for permits, plan submissions, plan reviews and reinspections.

3. The allocation of monies from the arson detection reward fund established by section 37-1387.

D. Members of the committee are not eligible to receive compensation for service on the committee but are eligible for reimbursement of expenses pursuant to title 38, chapter 4, article 2.

E. If the state fire safety committee requires the use of a fire watch, an employee who works at the building in which a fire watch is required may serve as the fire watch. A person who is designated as a fire watch shall be equipped with means to contact the local fire department, and the person's only duty shall be to perform constant patrols of the protected premises while keeping watch for fires. The local jurisdiction shall provide the fire watch with printed instructions from the office of the state fire marshal and may provide a free training session before the person's deployment as the fire watch begins. For the purposes of this subsection, "fire watch" means a person who is stationed in a building or in a place relative to a building to observe the building and its openings when the fire protection system for the building is temporarily nonoperational or absent.

[37-1308. Fire detection, prevention and suppression training for ranchers and landowners; immunity](#)

A. To ensure that ranchers and landowners in this state are adequately equipped to protect their own property and neighboring property from forest and range fires, the Arizona department of forestry and fire management shall develop a program to train individual or groups of ranchers and landowners to detect, prevent and suppress forest and range fires within this state.

B. This state is not liable for any claim based on a rancher's or landowner's exercise or performance of, or failure to exercise or perform, any fire detection, prevention or suppression activity that the landowner or rancher was trained to exercise or perform under subsection A of this section.

37-1309. Nonnative vegetation species eradication fund; department duties; grants; annual report

A. The nonnative vegetation species eradication fund is established consisting of legislative appropriations for specific nonnative vegetation invasive species eradication projects. Monies in the fund are continuously appropriated to the Arizona department of forestry and fire management for the purposes of this section and are exempt from the provisions of section 35-190 relating to lapsing of appropriations. On notice from the state forester, the state treasurer shall invest and divest monies in the fund as provided in section 35-313, and monies earned from investment shall be credited to the fund.

B. The Arizona department of forestry and fire management shall:

1. Coordinate with the Arizona state land department on projects conducted on state trust land pursuant to this section.
2. Coordinate with the Arizona game and fish department on projects conducted pursuant to this section.
3. Monitor and oversee specific projects for which the legislature appropriates monies to the nonnative vegetation species eradication fund.
4. Provide grants to other state agencies, cities, towns, counties, Indian tribes and other political subdivisions of this state and to nonprofit organizations for nonnative vegetation invasive species eradication projects that will assist in preventing fire and flooding, conserving water, replacing nonnative vegetative species with native vegetative species and restoring habitat to wildlife. A grant recipient shall follow state and federal laws to preserve endangered species when implementing the nonnative vegetation invasive species eradication project.
5. Establish application procedures and qualification criteria for the grants. Grants awarded pursuant to this section shall be awarded in accordance with title 41, chapter 24.

C. On or before September 1 of each year, the Arizona department of forestry and fire management shall report to the joint legislative budget committee and the governor's office of strategic planning and budgeting the total expenditures from the previous year for grants for nonnative vegetation species eradication projects. The report shall indicate each project's expenditures, the benefits of each project to the treated land, the status of each project and the projected timeline for completion of each project.

Article 3 Compact for Interstate Cooperation on Forests

37-1361. Enactment of compact

The compact for interstate cooperation on forests is enacted into law as follows:

Compact for interstate cooperation on forests

I. If federal law permits the forestry agency of two or more party states to assume any delegated agency role in performing any forestry management function on federal lands in that state, those party state agencies may, under concurrent jurisdiction, coordinate and unify the management of the forests that traverse the common boundary between those states including:

(A) Performing all management and administrative functions assigned or delegated by the United States relating to forestry.

(B) Compiling and sharing data and other information, documents and electronic files among the party states and the United States forest service.

(C) Projects for recovery, rehabilitation, maintenance and improvement of forests, watersheds and rangelands damaged by wildfire, drought, disease, pest infestation, depredation and other natural and human causes.

(D) Wildfire prevention and suppression activities.

II. This compact does not authorize:

(A) Any conduct that is illegal in any party state.

(B) The prosecution of any person for conduct that is lawful in the state where it was committed.

III. This compact is ratified by enactment of the language of this compact, or substantially similar language expressing the same purpose, by at least two states that form a common boundary.

Article 4 **Office of the State Fire Marshal**

37-1381. Office of the state fire marshal; purpose; assistant director; qualifications

To promote public health and safety and to reduce hazards to life, limb and property, the office of the state fire marshal is established within the Arizona department of forestry and fire management. The office shall perform its duties by performing inspections and fire investigations, by providing public education and by adopting fire protection codes. The person appointed as assistant director of the office of the state fire marshal shall have extensive experience in the field of fire prevention and fire protection, including administrative experience in such a capacity.

37-1382. Deputy fire marshals and assistants; appointment; duties; recovery of costs

A. With the approval of the state forester, the assistant director of the office of the state fire marshal may:

1. Hire deputy fire marshals who shall have knowledge in the field of fire safety and have at least five years' experience in fire safety and hire such other assistants and employees as are necessary to properly discharge the duties imposed on the office of the state fire marshal pursuant to this article.

2. Appoint as assistant fire inspectors any of the fire chiefs of a city, town, county, volunteer fire company or protective district or an employee of a private fire service provider who meets the requirements of this section to act within their area of jurisdiction or area of service or on the recommendation of the fire chief appoint other assistant fire inspectors if needed to function within the jurisdiction.

3. Appoint other assistant fire inspectors who meet the requirements of this section as are necessary in areas that are not under the jurisdiction of a fire chief designated in paragraph 2 of this subsection and who may be employees of this state, the federal government or a private fire service provider.

B. Assistant fire inspectors appointed pursuant to subsection A of this section shall carry out their duties only within the geographic areas assigned by the assistant director of the office of the state fire marshal. When designating assistant fire inspectors and when assigning geographic areas, the assistant director of the office of the state fire marshal shall give a preference to assigning assistant fire inspectors to the service area covered by the municipal or private fire service provider where the assistant fire inspector is employed.

C. Assistant fire inspectors appointed under subsection A, paragraph 2 or 3 of this section are not entitled to receive additional compensation for performing duties under this article, except that an employee of a public or private fire service provider who acts as an assistant fire inspector may charge fees to recover costs incurred in conducting inspections or for the review of plans and inspections of property. Assistant fire inspectors appointed under subsection A, paragraph 2 or 3 of this section or fire inspectors appointed pursuant to subsection E of this section shall have attended fire inspector training by an entity that meets nationally recognized standards and is approved by the office of the state fire marshal.

D. An assistant fire inspector who is appointed pursuant to subsection A of this section may inspect property, issue notices of violation and enforce the jurisdiction's fire code. An assistant fire inspector who is appointed pursuant to subsection A of this section shall report all actions taken to the assistant director of the office of the state fire marshal in a manner prescribed by the assistant director.

E. A city, town or county may appoint a fire inspector from one or more public or private fire service providers that service areas in the city, town or county to inspect property. City, town or county fire inspectors may issue notices of violation and enforce the fire code on behalf of the city, town or county within the respective service area of the public or private fire service provider. A fire inspector shall report all actions taken to the city, town or county manager. A

fire inspector who is appointed pursuant to this subsection is not entitled to receive additional compensation for performing duties on behalf of the city, town or county, but may charge fees to recover the costs for review of plans and the inspection of public or private premises.

F. The assistant director of the office of the state fire marshal, deputy fire marshals, assistant fire inspectors or a fire inspector who is appointed pursuant to this section may inspect buildings and premises in response to an emergency call or at the request of the occupant of the public or private property.

G. The amount of the fees charged by a fire inspector or an assistant fire inspector shall be available at the office of the state fire marshal or the city, town or county where the property is located.

37-1383. Powers and duties; arson investigators

A. Under the authority and direction of the state forester, the assistant director of the office of the state fire marshal or a deputy fire marshal or an assistant fire inspector acting at the direction of the assistant director of the office of the state fire marshal shall:

1. Assist in the enforcement of state laws and ordinances of cities and counties relating to fire prevention and fire protection.

2. Adopt by rule a state fire code establishing minimum standards for:

(a) Safeguarding life and property from fire and fire hazards.

(b) The prevention of fires and alleviation of fire hazards.

(c) The storage, sale, distribution and use of dangerous chemicals, combustibles, flammable liquids, explosives and radioactive materials.

(d) The installation, maintenance and use of fire escapes, fire protection equipment, fire alarm systems, smoke detectors and fire extinguishing equipment.

(e) The means and adequacy of fire protection and exit in case of fire in places in which numbers of persons work, live or congregate, excluding family dwellings that have fewer than five residential dwelling units.

(f) Other matters relating to fire prevention and control that are considered necessary by the office of the state fire marshal.

3. Adopt rules and a schedule of fees for permits, plan submissions, plan reviews and reinspections that are payable by persons regulated under this article.

4. Adopt rules for the allocation of monies from the arson detection reward fund established by section 37-1387. The rules shall be consistent with the purposes set forth in section 37-1387 and shall promote the effective and efficient use of the fund monies.

5. Enforce compliance with the fire code adopted pursuant to this subsection throughout this state except in any city having a population of one hundred thousand persons or more that has in effect a nationally recognized fire code, whether modified or unmodified, and that has enacted an ordinance to assume such jurisdiction from the office of the state fire marshal. Such cities do not have authority that supersedes and are not exempt from the state fire code established pursuant to this subsection in state or county owned buildings wherever located throughout the state.

6. Cooperate and coordinate with other state agencies in the administration of the state fire code.

7. Establish a regularly scheduled fire safety inspection program for all state and county owned public buildings and all public and private school buildings wherever located throughout the state, except for private school buildings in cities with a population of one hundred thousand or more persons.

8. Inspect as necessary all other occupancies located throughout this state, except family dwellings having fewer than five residential dwelling units and occupancies located in cities with a population of one hundred thousand or more persons.

9. At the written request of county or municipal authorities, make and provide to them a written report of the examination made by the office of the state fire marshal of any fire within their jurisdiction.

10. Administer the arson detection reward fund established by section 37-1387.

B. All plans and specifications for new construction, remodeling, alterations and additions for state, county and public school buildings and grounds shall be submitted to the state forester for review and approval by the assistant director of the office of the state fire marshal or as authorized to a deputy fire marshal or an assistant fire inspector acting at the direction of the assistant director of the office of the state fire marshal before construction. The plans and specifications shall be reviewed and approved or disapproved within sixty days after submission. Construction shall not commence until the plans have been approved and a permit has been issued.

C. Under the authority and direction of the state forester, the assistant director of the office of state fire marshal or a deputy fire marshal or an assistant fire inspector acting at the direction of the assistant director of the office of the state fire marshal may:

1. Conduct or participate in investigations of causes, origins and circumstances of fires, including cases of possible arson.

2. Prescribe a uniform system of reporting fires and their causes and effects.

3. Provide and coordinate training in firefighting and fire prevention and cooperate with educational institutions to provide and further such training.

4. Impound necessary evidence in conjunction with investigations of causes, origins and circumstances of fires if that evidence might be lost, destroyed or otherwise altered if not impounded.

5. Employ specialized testing services to evaluate evidence and conditions involved in fire investigations.

6. Designate certain members of the office of the state fire marshal's staff or a deputy fire marshal or an assistant fire inspector as arson investigators.

D. The primary duty of investigators designated pursuant to subsection C, paragraph 6 of this section is the investigation, detection and apprehension of persons who have violated or are suspected of violating any provision of title 13, chapter 17. A person designated as an arson investigator, while engaged in arson investigation in this state, possesses and may exercise law enforcement powers of peace officers of this state. This subsection does not grant any powers of peace officers of this state to arson investigators other than those necessary for the investigation, detection and apprehension authority granted by this subsection. Any individual designated as an arson investigator shall have law enforcement training under section 41-1822.

37-1384. [Inspection; consent; search warrant](#)

A. The assistant director of the office of the state fire marshal, a deputy fire marshal or an assistant fire inspector may investigate fire damage and shall carry out periodic inspection programs of buildings and premises to examine or inspect for fire hazards.

B. In carrying out such inspections or investigations, the assistant director of the office of the state fire marshal, a deputy fire marshal or an assistant fire inspector shall identify himself to the owner or tenant of the building or premises and seek the consent of the owner or tenant to carry out such an inspection. If consent is refused, or if it is not possible to reasonably obtain consent, the assistant director of the office of the state fire marshal, deputy fire marshal or an assistant fire inspector shall obtain a search warrant for the building or property in compliance with title 13, chapter 38, article 8.

C. If the assistant director of the office of the state fire marshal is assisting a local fire department in an investigation of fire damage, the authority of the local fire department to investigate the fire damage shall be deemed to include the assistant director of the office of the state fire marshal, deputy fire marshal or an assistant fire inspector.

37-1385. [School protection; definition](#)

A. The assistant director of the office of the state fire marshal, deputy fire marshal or an assistant fire inspector shall enforce rules and regulations for establishing programs for evacuating school buildings and for instructing all students in public and private schools as to proper methods of

fire prevention and control and of the importance thereof. Such rules, regulations and programs shall be transmitted to the department of education for distribution to those schools.

B. For the purposes of this article, "school" means an educational institution of any description, public or private, wherever situated in this state.

37-1386. Construction of article; hazardous materials; electronic filing

A. This article does not prohibit cities subject to this article, towns or volunteer fire districts from enacting ordinances, resolutions, rules or regulations with regard to fire protection or prevention pursuant to other provisions of law or charter, provided such ordinances, resolutions, rules or regulations are equal to or exceed minimum standards imposed pursuant to this article.

B. A facility that is located in a city or town with a population of seventy-five thousand persons or more, in conjunction with the local fire department or fire district, may deliver hazardous materials management plans and hazardous materials inventory statements electronically.

C. Nothing in this section prohibits a local fire department or fire district from requiring electronic filing of hazardous materials management plans and hazardous materials inventory statements.

37-1387. Arson detection reward fund; administration; purpose; receipts and disbursements

A. The arson detection reward fund is established and shall be administered within the guidelines of this section and rules of the office of state fire marshal.

B. The advisory committee on arson prevention established by the office of the state fire marshal shall provide rewards of not to exceed ten thousand dollars for information concerning a violation of any provision of title 13, chapter 17 relating to arson. The reward amounts shall be based on the value of the information, the availability of information from other sources and other factors deemed relevant by the committee.

C. The advisory committee is subject to title 38, chapter 3, article 3.1 and title 39, chapter 1, article 2, except that the advisory committee shall not disclose records that:

1. Reveal the identity of a confidential informant.
2. Endanger the life or physical safety of any person.
3. Jeopardize any ongoing criminal investigation.

D. Payment of rewards shall be from available funds consisting of:

1. Fines imposed by a court for an offense set forth in title 13, chapter 17. Notwithstanding section 13-811, the municipal, justice or superior court imposing and collecting such fine shall

transfer the monies to the appropriate county treasurer who shall transfer the amount to the state treasurer for deposit in the arson detection reward fund.

2. Monies from forfeiture of bail posted in connection with an offense set forth in title 13, chapter 17. All amounts recovered by the prosecutor on an appropriate order of judgment forfeiting all or part of the amount of the bond shall be transferred to the appropriate county treasurer who shall transfer the amount to the state treasurer for deposit in the arson detection reward fund.

3. Monies received from donations to the fund.

4. Monies appropriated by the legislature for the purposes of this section.

E. Monies may be expended only for payment of rewards and promotion of public awareness of the arson detection reward fund.

F. Balances in the fund remaining at the end of the fiscal year are exempt from section 35-190, relating to lapsing of appropriations.

37-1388. Fire protection systems; definitions

A. All backflow prevention equipment installed on class 1 and class 2 fire protection systems shall comply with state fire code standards.

B. Check valve assemblies installed on class 1 or class 2 fire protection systems as backflow protection equipment pursuant to this section shall be inspected and maintained in accordance with the state fire code. Inspections of check valve assemblies installed on class 1 or class 2 fire protection systems shall be performed on an annual basis with records of the inspections provided to the local fire department and drinking water provider.

C. Any malfunction or abnormality with a check valve assembly installed on class 1 or class 2 fire protection systems shall be reported within twenty-four hours to the local fire department and drinking water provider.

D. A fire code authority may establish guidelines for the installation of backflow prevention equipment on a class 1 or class 2 fire protection system that exceeds the minimum standards established by the state fire code if the backflow prevention equipment is approved for use on class 1 or class 2 fire protection systems pursuant to the state fire code.

E. A fire code authority or a drinking water provider may require the installation of backflow prevention equipment on class 1 and class 2 fire protection systems that exceeds the minimum standards established by the state fire code if a special backflow condition is identified. The use of nonpotable pipe in a fire protection system does not by itself constitute a special backflow condition. The drinking water provider shall consult with the fire code authority and provide the fire code authority with an opportunity to comment before installing or requiring the installation of backflow equipment that exceeds the minimum standards established by the state fire code.

F. For the purposes of this section:

1. "Class 1 fire protection system" means a fire protection system that is directly connected to a public water main and on which all sprinkler drains discharge into the atmosphere, dry wells or other safe outlets. Class 1 fire protection system does not include a system that has a connection with pumps, tanks, reservoirs or other water supplies, or a system that contains antifreeze or other additives.

2. "Class 2 fire protection system" means a class 1 fire protection system with booster pumps installed in the connections from the street mains.

3. "Fire code authority" means the assistant director of the office of the state fire marshal or the assistant director's designee, except that for an incorporated city or town with a population of at least one hundred thousand persons that has adopted an ordinance pursuant to section 37-1383, subsection A, fire code authority means the municipal fire chief or the fire chief's designee.

4. "Special backflow condition" means a condition that exists at the site of a class 1 or class 2 fire protection system and that may present a contamination hazard to the domestic water supply, including:

(a) Underground fire protection system lines that are parallel to and within six feet horizontally of sewer lines or other lines carrying toxic materials.

(b) The use, storage or handling of materials on a site by a property owner or occupant that could present a significant health hazard to the domestic water supply.

(c) The presence of unusually complex piping systems.

(d) Water supplied to a site or an area from either:

(i) Two or more services of a water utility.

(ii) Two different water utilities.

(iii) A supplemental water supply.

37-1389. Substitute refrigerants; approval by administrator

A person shall not use, sell or offer to sell a product intended for use as a refrigerant for any motor vehicle, residential, commercial or industrial air conditioning system, refrigerator or other cooling or heating device unless it has been approved for use by the administrator of the United States environmental protection agency or it meets one of the following standards relating to flammability:

1. SAE J639.

2. SAE J1657.

3. ASHRAE standard 34-1992.

4. UL2182.

5. ASTM E681-85.

37-1390. Safety standards in fire training

All training provided by the state forester shall comply with the safety standards prescribed by the national fire protection association and the occupational safety and health administration regulations of this state.

37-1391. Cease and desist order; law enforcement procedures; violation; civil penalty

A. If the state forester, the assistant director of the office of the state fire marshal or a deputy fire marshal has reasonable cause to believe that any person has committed or is committing a violation of this article, any rule adopted pursuant to this article or any order issued pursuant to this article that does not constitute an immediate and apparent hazard to life or property, the assistant director through the state forester may issue and serve on the person by certified mail a cease and desist order.

B. If the violation does not constitute an immediate hazard to life or property, the assistant director of the office of the state fire marshal shall grant to the person whom the assistant director alleges to be in violation of any rule or order a reasonable period of time, which is not less than five days after the date of receipt of the notice, to comply with the order.

C. On the failure or refusal of a person to comply with a cease and desist order issued pursuant to subsection A of this section, the state forester may file an action in the superior court in the county in which the violation is alleged to have occurred to enjoin the person from engaging in further acts in violation of the cease and desist order. The court shall proceed as in other actions for preliminary injunction. Any person found to be in contempt of an injunctive order of the court shall be assessed a civil penalty of not more than one thousand dollars with each day of violation constituting a separate contempt.

D. If the state forester, the assistant director of the office of the state fire marshal or a deputy fire marshal has reasonable cause to believe that any person has committed or is committing a violation of this article, any rule adopted pursuant to this article or any order issued pursuant to this article that constitutes an immediate and apparent hazard to life or property, the assistant director through the state forester may either:

1. Issue and serve by personal service a cease and desist order, which may require immediate compliance. On failure of a person to comply with a cease and desist order issued pursuant to this paragraph, the state forester shall file an action in the superior court in the county where the

violation occurred to enjoin the person from engaging in further acts in violation of the cease and desist order.

2. File an action in the superior court in the county in which the violation is alleged to have occurred to enjoin a person from engaging in further acts in violation of the rule or order without issuing a cease and desist order.

E. In an action filed under subsection D of this section, the court shall proceed as in other actions for preliminary injunction. Any person found to be in contempt of an injunctive order of the court shall be assessed a civil penalty of not more than one thousand dollars with each day of violation constituting a separate contempt.

F. A person who is served with a cease and desist order pursuant to this section may request a hearing pursuant to title 41, chapter 6, article 10.

Article 5 **Reduced Cigarette Ignition Propensity**

37-1401. Definitions

(Conditionally Rpld.)

In this article, unless the context otherwise requires:

1. "Agent" means a person who is authorized by the department of revenue to purchase and affix stamps on packages of cigarettes.
2. "Cigarette" means any roll of tobacco or any substitute for tobacco wrapped in paper or any substance not containing tobacco.
3. "Manufacturer" means:
 - (a) An entity that manufactures or otherwise produces cigarettes or causes cigarettes to be manufactured or produced anywhere and that the manufacturer intends to be sold in this state, including cigarettes that are intended to be sold in the United States through an importer.
 - (b) The first purchaser anywhere that intends to resell in the United States cigarettes that are manufactured anywhere and that the original manufacturer or maker does not intend to be sold in the United States.
 - (c) A successor entity to an entity described in subdivision (a) or (b) of this paragraph.

4. "Quality control and quality assurance program" means the laboratory procedures implemented to ensure:

(a) That operator bias, systematic and nonsystematic methodological errors and equipment-related problems do not affect the results of the testing.

(b) That the testing repeatability remains within the required repeatability values prescribed in section 37-1402, subsection B, paragraph 6 for all test trials that are used to certify cigarettes pursuant to this article.

5. "Repeatability" means the range of values within which the repeat results of cigarette test trials from a single laboratory will fall ninety-five percent of the time.

6. "Retailer" means any person, other than a manufacturer or wholesaler, who is engaged in selling cigarettes or tobacco products.

7. "Sale" means a transfer of title or possession, or both, or an exchange or barter, conditional or otherwise, in any manner or by any means whatever or any agreement to transfer, exchange or barter. Sale includes the giving of cigarettes as samples, prizes or gifts and the exchanging of cigarettes for any consideration other than money.

8. "Sell" means to sell or to offer or agree to sell.

9. "Wholesaler" means a person, other than a manufacturer, who sells cigarettes or tobacco products to retailers or other persons for resale, and any person who owns, operates or maintains one or more cigarette or tobacco product vending machines in, at or on premises owned or occupied by any other person.

[37-1402. Test method and performance standard; civil penalty; reports](#)

(Conditionally Rpld.)

A. Except as provided in subsection I of this section, cigarettes may not be sold or offered for sale in this state or offered for sale or sold to persons located in this state unless both of the following occur:

1. The cigarettes are tested pursuant to the test method prescribed in this section and meet the performance standard prescribed in this section.

2. The manufacturer files a written certification with the office of the state fire marshal pursuant to section 37-1403 and marks the cigarettes pursuant to section 37-1404.

B. The tests prescribed in subsection A, paragraph 1 of this section shall conform to the following standards:

1. Testing of cigarettes shall be conducted pursuant to the American society of testing and materials standard E2187-04, "standard test method for measuring the ignition strength of cigarettes".
2. Testing shall be conducted on ten layers of filter paper.
3. Not more than twenty-five percent of the cigarettes tested in a test trial pursuant to this section shall exhibit full-length burns. Forty replicate tests comprise a complete test trial for each cigarette tested.
4. The performance standard required by this subsection is applied only to a complete test trial.
5. Written certifications shall be based on testing conducted by a laboratory that has been accredited pursuant to standard ISO/IEC 17025 of the international organization for standardization or another comparable accreditation standard required by the office of the state fire marshal.
6. Laboratories conducting testing pursuant to this subsection shall implement a quality control and quality assurance program that includes a procedure that will determine the repeatability of the testing results. The repeatability value shall not be greater than 0.19.
7. Additional testing is not required if cigarettes are tested consistent with this article for any other purpose.
8. Testing performed or sponsored by the office of the state fire marshal to determine a cigarette's compliance with the performance standard required by this subsection shall be conducted pursuant to this subsection.

C. Each cigarette listed in a certification submitted pursuant to section 37-1403 that uses lowered permeability bands in the cigarette paper to achieve compliance with the performance standard prescribed in this section shall have at least two nominally identical bands on the paper surrounding the tobacco column. At least one complete band shall be located at least fifteen millimeters from the lighting end of the cigarette. For cigarettes on which the bands are positioned by design, there shall be at least two bands fully located at least fifteen millimeters from the lighting end and ten millimeters from the filter end of the tobacco column or ten millimeters from the labeled end of the tobacco column for nonfiltered cigarettes.

D. A manufacturer of a cigarette that the office of the state fire marshal determines cannot be tested pursuant to the test method prescribed in subsection B, paragraph 1 of this section shall propose a test method and performance standard for the cigarette to the office of the state fire marshal. On approval of the proposed test method and a determination by the office of the state fire marshal that the performance standard proposed by the manufacturer is equivalent to the performance standard prescribed in subsection B, paragraph 3 of this section, the manufacturer

may employ that test method and performance standard to certify the cigarette pursuant to section 37-1403. If the office of the state fire marshal determines that another state has enacted reduced cigarette ignition propensity standards that include a test method and performance standard that are the same as those prescribed in this article, and the office of the state fire marshal finds that the officials responsible for implementing those requirements have approved the proposed alternative test method and performance standard for a particular cigarette proposed by a manufacturer as meeting the fire safety standards of that state's law or regulation under a legal provision comparable to this section, the office of the state fire marshal shall authorize that manufacturer to employ the alternative test method and performance standard to certify that cigarette for sale in this state, unless the office of the state fire marshal demonstrates a reasonable basis why the alternative test should not be accepted pursuant to this article. All other applicable requirements of this section apply to the manufacturer.

E. Each manufacturer shall maintain copies of the reports of all tests conducted on all cigarettes offered for sale for three years and shall make copies of these reports available to the office of the state fire marshal and the attorney general on written request. Any manufacturer that fails to make copies of these reports available within sixty days after receiving a written request is subject to a civil penalty of not to exceed ten thousand dollars for each day after the sixtieth day that the manufacturer does not make the copies available.

F. The office of the state fire marshal may adopt a subsequent American society of testing and materials standard test method for measuring the ignition strength of cigarettes on a finding that the subsequent method does not result in a change in the percentage of full-length burns exhibited by any tested cigarette if compared to the percentage of full-length burns the same cigarette would exhibit if it were tested pursuant to the American society of testing and materials standard E2187-04 and the performance standard prescribed in subsection B, paragraph 3 of this section.

G. The office of the state fire marshal shall review the effectiveness of this section and report every three years to the legislature on the office of the state fire marshal's findings and any recommendations for legislation to improve the effectiveness of this section. The office of the state fire marshal shall submit the report and legislative recommendations on or before July 1 of each three-year period.

H. The office of the state fire marshal shall notify the governor, the speaker of the house of representatives and the president of the senate in writing immediately after a federal reduced cigarette ignition propensity standard that preempts the standard prescribed in this article becomes effective.

I. This section does not prohibit either of the following:

1. Wholesalers or retailers from selling their existing inventory of cigarettes on or after August 1, 2009 if the wholesaler or retailer can establish that state tax stamps were affixed to the cigarettes before August 1, 2009 and the wholesaler or retailer can establish that the inventory was purchased before August 1, 2009 in comparable quantity to the inventory purchased during the same period of the prior year.

2. The sale of cigarettes solely for the purpose of consumer testing. For the purposes of this paragraph, "consumer testing" means an assessment of cigarettes that is conducted by a manufacturer, or under the control and direction of a manufacturer, for the purpose of evaluating consumer acceptance of the cigarettes, using only the quantity of cigarettes that is reasonably necessary for such an assessment.

37-1403. Certification; product change; fee

(Conditionally Rpld.)

A. Each manufacturer shall submit to the office of the state fire marshal a written certification attesting that each cigarette listed in the certification:

1. Has been tested pursuant to section 37-1402.
2. Meets the performance standards prescribed in section 37-1402.

B. The manufacturer shall describe each cigarette listed in the certification with the following information:

1. Brand or trade name on the package.
2. Style, such as light or ultra light.
3. Length in millimeters.
4. Circumference in millimeters.
5. Flavor, such as menthol or chocolate, if applicable.
6. Filter or nonfilter.
7. Package description, such as soft pack or box.
8. Marking approved pursuant to section 37-1404.
9. Name, address and telephone number of the laboratory, if different than the manufacturer that conducted the test.
10. Date that the testing occurred.

C. A manufacturer shall recertify each cigarette certified under this section every three years.

D. A manufacturer shall make the certifications available to the attorney general for purposes consistent with this article and the department of revenue for the purposes of ensuring compliance with this section.

E. If a manufacturer has certified a cigarette pursuant to this section and after certification makes any change to the cigarette that is likely to alter its compliance with the reduced cigarette ignition propensity standards prescribed by this article, that cigarette shall not be sold or offered for sale in this state until the manufacturer retests the cigarette pursuant to the testing standards prescribed in section 37-1402 and maintains records of that retesting as required by section 37-1402. Any altered cigarette that does not meet the performance standard prescribed in section 37-1402 may not be sold in this state.

F. The office of the state fire marshal may adopt rules requiring each manufacturer to pay to the office of the state fire marshal a fee of two hundred fifty dollars per brand family of cigarettes certified in compliance with this section. The fee applies to all cigarettes within the brand family certified and includes any new cigarette brand style within the brand family during the three-year certification period.

37-1404. Markings; requirements; office of the state fire marshal approval

(Conditionally Rpld.)

A. A manufacturer shall mark cigarettes that are certified pursuant to section 37-1403 to indicate compliance with section 37-1402. The marking shall be in at least eight-point type and shall consist of either:

1. Modification of the product UPC code to include a visible mark printed at or around the area of the UPC code. The mark may consist of alphanumeric or symbolic characters permanently stamped, engraved, embossed or printed in conjunction with the UPC code.
2. Any visible combination of alphanumeric or symbolic characters permanently stamped, engraved or embossed on the cigarette package or cellophane wrap.
3. Printed, stamped, engraved or embossed text that indicates that the cigarettes meet the standards of this section.

B. A manufacturer shall use only one marking and shall apply this marking uniformly for all packages, including packs, cartons and cases, and brands marketed by that manufacturer.

C. Before the certification of any cigarette, a manufacturer shall present its proposed marking to the office of the state fire marshal for approval. Proposed markings are deemed approved if the office of the state fire marshal fails to act within ten business days after receiving a request for

approval. On receipt of the request, the office of the state fire marshal shall approve or disapprove the marking offered, except that the office of the state fire marshal shall approve either of the following:

1. Any marking in use and approved for sale in New York state pursuant to the New York fire safety standards for cigarettes in section 156-c of the New York executive law and part 429 of title 19 of the New York Code of Rules and Regulations.
2. The letters "FSC", which signify fire standards compliant, appearing in eight-point type or larger and are permanently printed, stamped, engraved or embossed on the package at or near the UPC code.

D. A manufacturer shall not modify its approved marking unless the modification has been approved by the office of the state fire marshal pursuant to this section.

E. Manufacturers certifying cigarettes pursuant to section 37-1403 shall provide a copy of the certifications to all wholesalers and agents to whom they sell cigarettes and shall also provide sufficient copies of an illustration of the package marking used by the manufacturer pursuant to this section for each retailer to whom the wholesalers or agents sell cigarettes. Wholesalers and agents shall provide a copy of these package markings received from manufacturers to all retailers to whom they sell cigarettes. Wholesalers, agents and retailers shall permit the office of the state fire marshal, the department of revenue or the attorney general, or their employees, to inspect markings of cigarette packaging marked pursuant to this section.

37-1405. [Civil penalties; seizure](#)

(Conditionally Rpld.)

A. A manufacturer, wholesaler, agent or other person or entity that knowingly sells or offers to sell cigarettes, other than through retail sale, in violation of section 37-1402 is subject to a civil penalty of not to exceed one hundred dollars for each pack of cigarettes sold or offered for sale. This penalty shall not exceed twenty-five thousand dollars during any thirty-day period.

B. A retailer who knowingly sells or offers to sell cigarettes in violation of section 37-1402 is subject to a civil penalty of not to exceed one hundred dollars for each pack of cigarettes sold or offered for sale. This penalty shall not exceed one thousand dollars during any thirty-day period.

C. In addition to any penalty prescribed by law, any corporation, partnership, sole proprietor, limited partnership or association that is engaged in the manufacture of cigarettes and that knowingly makes a false certification pursuant to section 37-1403 is subject to a civil penalty of at least twenty-five thousand dollars but not more than one hundred thousand dollars for each false certification.

D. A person who violates any other provision of this article is subject to a civil penalty for a first offense of not to exceed one thousand dollars and a civil penalty of not to exceed five thousand dollars for each subsequent violation.

E. Any cigarettes that have been sold or offered for sale and that do not comply with the performance standard prescribed by section 37-1402 are subject to forfeiture and, on forfeiture, shall be destroyed. Before the destruction of any forfeited cigarette, the true holder of the trademark rights in the cigarette brand may inspect the cigarette.

F. In addition to any other remedy provided by law, the state forester or the attorney general may file an action in the superior court for injunctive relief or to recover any costs or damages suffered by this state because of a violation of this section, including enforcement costs relating to the specific violation and attorney fees. Each violation of this section or rules adopted pursuant to this section is a separate civil violation for which the state forester or attorney general may obtain relief.

G. If a law enforcement officer or duly authorized representative of the office of the state fire marshal discovers cigarettes that have not been marked as required by section 37-1404, the officer or representative shall notify the department of revenue and may seize and take possession of the cigarettes. The cigarettes shall be turned over to the department of revenue and shall be forfeited to the state. Cigarettes seized pursuant to this section shall be destroyed. Before the destruction of any seized cigarette, the true holder of the trademark rights in the cigarette brand may inspect the cigarette.

37-1406. Implementation; rulemaking; inspection of cigarettes; definitions

(Conditionally Rpld.)

A. The office of the state fire marshal shall implement this article pursuant to the implementation and substance of the New York fire safety standards for cigarettes in section 156-c of the New York executive law and part 429 of title 19 of the New York Code of Rules and Regulations.

B. The office of the state fire marshal may adopt rules to enforce this article.

C. As authorized pursuant to section 42-3151, the department of revenue in the regular course of conducting inspections of distributors and retailers may inspect cigarettes to determine whether the cigarettes are marked as required by section 37-1404. If the cigarettes are not marked as required, the department of revenue shall notify the office of the state fire marshal.

D. An agent of the department of revenue who is also a law enforcement agent or investigator may conduct inspections pursuant to section 37-1405, subsection G.

E. For the purpose of this section, "cigarette", "distributor" and "retailer" have the same meanings prescribed in section 42-3001.

37-1407. [Inspection](#)

(Conditionally Rpld.)

To enforce this article, the attorney general and the office of the state fire marshal under the authority and direction of the state forester, or their employees, may examine the books, papers, invoices and other records of any person in possession, control or occupancy of any premises where cigarettes are placed, stored, sold or offered for sale, as well as the stock of cigarettes on the premises. Each person in the possession, control or occupancy of any premises where cigarettes are placed, sold or offered for sale shall allow the attorney general and the office of the state fire marshal, or their employees, the means, facilities and opportunity for the examinations authorized by this section.

37-1408. [Sale outside of state](#)

(Conditionally Rpld.)

This article does not prohibit any person or entity from manufacturing or selling cigarettes that do not meet the requirements of section 37-1402 if the cigarettes are or will be stamped for sale in another state or are packaged for sale outside of the United States and that person or entity has taken reasonable steps to ensure that the cigarettes will not be sold or offered for sale to persons in this state.

37-1409. [State preemption](#)

The legislature finds that the safety standards prescribed in this article are of statewide concern. This article preempts regulation by a political subdivision of this state regarding the cigarette ignition propensity safety standards prescribed in this article.

Article 6 **Trampoline Courts**

37-1421. [Definition of trampoline court](#)

In this article, unless the context otherwise requires, "trampoline court":

1. Means a commercial facility with a defined area composed of one or more trampolines, a series of trampolines, a trampoline court foam pit or a series of trampoline court foam pits.

2. Does not include:

(a) Any playground operated by a school or local government.

(b) Inflatable rides, inflatable bounce houses, ball crawls and equipment used exclusively for exercise.

(c) A physical rehabilitation facility.

(d) A gymnastic training facility that derives a majority of its revenue from supervised instruction in the teaching of gymnastic skills and basics.

37-1422. Duties; fund

A. The state forester shall:

1. Administer and enforce this article, including adopting rules necessary to administer and enforce this article.

2. Establish fees for the initial registration and renewal of registration of trampoline courts in amounts to be determined by the state forester. The state forester shall deposit, pursuant to sections 35-146 and 35-147, all fees received pursuant to this section in the trampoline court safety fund established by this section.

3. Request from each trampoline court owner or operator information to determine that the insurance required by this article is in effect and that the trampoline court has been inspected at least annually.

4. Maintain a registry of all trampoline courts.

5. Maintain as public record proof of insurance, service calls to emergency responders and inspection certificates that are issued by an insurer or an inspector with whom the insurer has contracted and records for each trampoline court that is registered pursuant to this article.

B. The trampoline court safety fund is established consisting of monies received pursuant to this section. The state forester shall administer the fund and use the monies in the fund to implement this article.

37-1423. Registration; renewal

A. At least thirty days before operation an owner or operator of a trampoline court must register with and submit to the state forester all of the following:

1. An application for registration on a form prescribed by the state forester and the fee prescribed by section 37-1422.

2. Proof of insurance as required by this article.

3. A copy of an inspection certificate that is issued by an insurer or an inspector with whom the insurer has contracted.

4. A copy of the owner's or operator's business license.

B. A registrant must renew its registration annually by submitting an application for renewal as prescribed by the state forester and the renewal fee prescribed by section 37-1422.

37-1424. Trampoline court owners and operators; requirements; denial of entry; rules

A. A trampoline court owner or operator shall:

1. Have the trampoline court inspected at least once each year by an insurer or an inspector with whom the insurer has contracted. If an inspection reveals that any component of the trampoline court does not substantially meet the American society for testing and materials standards, the inspector shall notify the state forester and the owner or operator and shall not issue the written certificate of inspection for that component of the trampoline court until the owner or operator meets the standards and makes the repairs or installs the replacement equipment.

2. Maintain at all times a written certificate of the annual inspection.

3. Procure insurance for the trampoline court from an insurer authorized to do business in this state pursuant to section 20-217 or by an insurer on the list of qualified unauthorized insurers pursuant to section 20-413, insuring the owner or operator against liability for injury to persons arising from the use of the trampoline court, in an amount of not less than one million dollars for bodily injury.

4. Maintain and display at all times the certificate of registration.

5. Maintain for a period of at least two years accurate records of any governmental action taken relating to the trampoline court, including any operation permits, insurance certificates, inspection reports, service calls to emergency responders, maintenance and operational records and records documenting the repair or replacement of equipment used in the operation of the trampoline court. The owner or operator of the trampoline court shall provide a copy of these records to the state forester on request when the owner or operator applies for initial registration and when the owner or operator applies for registration renewal.

6. Maintain for a period of at least two years accurate records of service calls to emergency responders from the trampoline court. Within ten days after a trampoline court makes a service call to an emergency responder, an owner or operator of the trampoline court shall provide a copy of the service call records to the state forester. The service call records are public records.

B. A registrant must notify the state forester within thirty days after any changes to the information that the registrant submitted to the state forester with the registrant's initial registration application or registration renewal application.

C. A trampoline court owner or operator may deny a person entry to the trampoline court if the owner or operator believes that the entry may jeopardize the safety of the person or any other trampoline court patron.

D. A trampoline court patron shall follow all rules that are posted or provided in writing to the patron by the trampoline court owner or operator. The rules must include a statement that there are inherent risks in the participation in a trampoline court activity or on any trampoline court and that a trampoline court patron, by participation, understands the risks inherent in the participation of which the ordinary prudent person is or should be aware. The rules must specify that a trampoline court patron:

1. Shall:

(a) Exercise good judgment and act in a responsible manner while using a trampoline court and obey all oral or written warnings before and during participation.

(b) Meet height, weight and age restrictions imposed by the owner to use the trampoline court or participate in the trampoline court activity.

2. Shall not:

(a) Participate in a trampoline court activity or on any trampoline court when under the influence of drugs or alcohol.

(b) Participate in a trampoline court activity or on any trampoline court if the patron may be pregnant, has had recent surgery, has a preexisting medical condition, circulatory condition, heart or lung condition, back or neck condition or history of spine, musculoskeletal or head injuries or has high blood pressure.

37-1426. Trampoline court regulation; state preemption

The regulation of trampoline courts is of statewide concern. The regulation of trampoline courts pursuant to this article is not subject to further regulation by a county, city, town or other political subdivision of this state.

D-1

DEPARTMENT OF ADMINISTRATION

Title 2, Chapter 7, Department of Administration - State Procurement Office



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: November 2, 2021

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

FROM: Council Staff

DATE: October 8, 2021

SUBJECT: Department of Administration
Title 2, Chapter 7

This Five-Year-Review Report (5YRR) from the Department of Administration relates to rules in Title 2, Chapter 7, regarding the State Procurement Office. The report covers the following:

Article 1 - General Provisions

Article 2 - Procurement Organization

Article 3 - Source Selection and Contract Formation

Article 4 - Specifications

Article 5 - Procurement of Construction and Specific Professional Services

Article 6 - Contract Clauses

Article 7 - Cost Principles

Article 9 - Legal and Contractual Remedies

Article 10 - Intergovernmental Procurement

In the previous 5YRR of these rules the Department indicated they would continue discussions with interested stakeholders to modify the definition of "procurement file" in R2-7-101(37). The Department indicates they have received no feedback on the definition of procurement file.

Proposed Action

The Department, for the reasons mentioned in the report, is proposing to amend several of its rules to improve their overall clarity, conciseness, understandability, effectiveness and consistency with other rules and statutes. The Department plans to conduct an expedited rulemaking that addresses the issues identified in the report within 18 months of receiving an exception to the rule moratorium from the Governor's Office.

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

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

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

The goal of the rules is to motivate more companies to do business with the State, which therefore increases competition for state business and creates the best value for state tax dollars. The Department states that the rules continue to optimize the use of taxpayer dollars and ensure the best interest of the State.

With a few exceptions, the rules have effectively allowed the Department to administer the Arizona Procurement Code for more than 220 state governmental units (agencies, boards, and commissions). The rules offer greater efficiency in public procurement; reduced operating costs for public procurement; increased opportunities for small, minority, and women-owned businesses; improved understanding and ease of use for government agencies and suppliers; and increased access to procurement opportunities and information.

The stakeholders include: government officials and managers, state government procurement employees, suppliers including small businesses and non-profit organizations that provide services to the state, and associations that represent various business groups, attorneys, and local government units (cities, counties, and school districts).

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

The department states that the rules in Title 2, Chapter 7 of the Arizona Administrative Code reduce the uncertainty, and therefore the costs associated with contracting with the state. The rules lower costs for state agencies and generally impose the least burden and

costs on both agencies and suppliers that do business with the State. The benefits of the rules outweigh the cost.

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

Yes, the Department indicates it's possible they might have received written criticisms to the rules prior to June 2018, but they no longer have access to those comments. Additionally, the Department indicates they have received non-written feedback from state government procurement employees.

5. **Has the agency analyzed the rules' clarity, conciseness, and understandability?**

Yes, the Department indicates the rules are overall clear, concise, and understandable with the exception of the following:

R2-7-C302 - Pre-Offer Conferences
R2-7-501 - Procurement of Specified Professional and Construction Services
R2-7-505 - Selection Committee
R2-7-B901 - Controversies Involving Contract Claims Against the State
R2-7-B902 - Agency Chief Procurement Officer's Decision
R2-7-G303 - Unsolicited Proposals

6. **Has the agency analyzed the rules' consistency with other rules and statutes?**

Yes, the Department indicates the rules are overall consistent with other rules and statutes, with the exception of the following:

R2-7-501 - Procurement of Specified Professional and Construction Services
R2-7-511 - Individual Job Order Contracting

7. **Has the agency analyzed the rules' effectiveness in achieving its objectives?**

Yes, the Department indicates the rules are overall effective in achieving their objectives with the exception of the following:

R2-7-501 - Procurement of Specified Professional and Construction Services
R2-7-511 - Individual Job Order Contracting

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

Yes, the Department indicates the rules are overall enforced as written with the exception of the following:

R2-7-501 - Procurement of Specified Professional and Construction Services
R2-7-511 - Individual Job Order Contracting

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

Not applicable, there are no corresponding federal laws to the rules.

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

Not applicable, the rules were adopted before July 29, 2010 and do not require the issuance of a permit.

11. **Conclusion**

As mentioned, the Department plans to complete an expedited rulemaking that addresses the issues identified in the report, within 18 months of receiving an exception from the rule moratorium from the Governor's Office. The expedited rulemaking will result in rules that are more clear, concise, understandable, effective, and consistent with other rules and statutes.

While Council staff recommends approval of this report, staff encourages the Council to further discuss the proposed time frame to complete the expedited rulemaking.

Douglas A. Ducey
Governor



Andy Tobin
Director

ARIZONA DEPARTMENT OF ADMINISTRATION

STATE PROCUREMENT OFFICE
100 NORTH FIFTEENTH AVENUE • SUITE 402
PHOENIX, ARIZONA 85007
<https://spo.az.gov/>

October 19, 2021

VIA EMAIL: grrc@azdoa.gov
Nicole Sornsin, Chair
Governor's Regulatory Review Council
100 North 15th Avenue, Suite 305
Phoenix, Arizona 85007

**RE: ADOA State Procurement Office, Title 2. Administration, Chapter 7.
Department of Administration - State Procurement Office, Five Year Review Report**

Dear Ms. Sornsin:

Please find enclosed the revised Five Year Review Report of the Arizona Department of Administration's State Procurement Office (ADOA SPO) for Title 2, Chapter 7 of the Arizona Administrative Code.

ADOA SPO hereby certifies compliance with A.R.S. § 41-1091. The report was revised based on GRRC staff's feedback in May 2021 and August 2021. The initial version was submitted on February 26, 2021. This cycle of the Five Year Review of the rules was initiated in August 2020, including input and feedback from multiple state agencies.

For questions about this report, please contact Compliance Deputy Assistant Director and Procurement Counsel Jessica Klein at 602-350-0339 or Jessica.Klein@azdoa.gov.

Sincerely,

Jessica Klein

Jessica Klein
Compliance Deputy Assistant Director

cc: Ed Jimenez, State Procurement Administrator



FIVE YEAR REVIEW REPORT

TITLE 2. ADMINISTRATION

CHAPTER 7. DEPARTMENT OF ADMINISTRATION - STATE PROCUREMENT OFFICE

OCTOBER 19, 2021 (Revision) | FEBRUARY 26, 2021 (Initial Submission)

1. Authorization of the rule by existing statutes

General Authority: Arizona Revised Statutes (A.R.S.) § 41-2511(A) authorizes the director to adopt rules governing the procurement and management of all materials, services, and construction to be procured by this state and the disposal of materials.

Specific Authority: A.R.S. §§ 41-2511, 41-2501 through 41-2504, 41-2512 through 41-2517, 41-2531 through 41-2544, 41-2546 through 41-2552, 41-2554 through 41-2559, 41-2561 through 41-2568, 41-2571 through 41-2574, 41-2576 through 41-2583, 41-2585 and 41-2586, 41-2591, 41-2601 through 41-2607, 41-2611 through 41-2617, 41-2631 through 41-2637, 41-2661 and 41-2662, and 41-2671 through 41-2673.

2. The objective of each rule:

The following rules are in the order they appear in Chapter 23 of the Arizona Procurement Code:

Rule	Objective
R2-7-102	To set forth the requirement of documenting the basis for an action related to a procurement, and establishing its proper storage and maintenance in the purchasing agency's procurement file.
R2-7-103	Details the steps to be taken by the agency chief procurement officer (ACPO) when confidentiality is requested.
R2-7-101	Defines common terminology in the Arizona Procurement Code.
R2-7-201	Provides a description of the State Procurement Administrator's (SPA) duties that include commonly understood duties around procurement and contracting, but also includes a duty to "establish training standards"; establish policy and procedures; and delegation of authority. Additionally, "maintain a record of each contract awarded" . . . under sole source and emergency procurement that exceeds \$100,000 and available for public inspection containing: contractor's name, estimated amount of each contract, and description of the item or service procured. Such records shall be maintained for a minimum of five years.



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Rule	Objective
R2-7-202	Provides the authority of the SPA to issue delegations to state agencies with limitations and guidance on what to consider. Also requires state agencies to update the SPA of changes.
R2-7-203	Provides the authority of the ACPO to delegate procurement authority to staff within the purchasing agency, within the limits specified by the SPA.
R2-7-204	Restricts state employees and public officers from using state contracts for their own personal or business use unless otherwise authorized in writing by the director.
R2-7-206	Provides the notification to procurement officers that they shall perform their duties in accordance with the Arizona Procurement Code and under the authority granted to them from the SPA to an ACPO to the individual.
R2-7-207	Provides for a problem resolution process and authority when there is a misunderstanding on procurement matters between an Agency and its chief procurement officer by directing such for resolution by the SPA.
R2-7-209	Requires the SPA to maintain a list of suppliers interested in doing business with the State and allows for a process to maintain that list.
R2-7-A301	Establishes a requirement to use mandatory/strategic contracts, and outlines what must be done when not using a mandatory/strategic contract.
R2-7-B301	Provides minimum requirements for publicly soliciting goods and services in accordance with A.R.S. § 41-2533.
R2-7-B302	Provides guidance for conducting pre-offer conferences when publicly soliciting goods and services in accordance with A.R.S. § 41-2533.
R2-7-B303	Provides general reasons for issuing a solicitation amendment, process for notifying potential offerors of amendments, and requirement that offerors acknowledge their receipt of a solicitation amendment before the due date and time of an offer. This applies when soliciting for goods and services in accordance with A.R.S. § 41-2533 and A.R.S. § 41-2534.
R2-7-B304	Provides guidance to suppliers for modifying or withdrawing an offer before the solicitation due date and record keeping compliance for the state agency in accordance with A.R.S. § 41-2533.
R2-7-B305	Provides guidance to ACPOs for cancellation of a solicitation before the solicitation due date in accordance with A.R.S. § 41-2539.
R2-7-B306	Provides guidance to ACPOs for maintaining record of offers received for a solicitation, opening and recording of offers in accordance with A.R.S. § 41-2533.

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Rule	Objective
R2-7-B307	Provides guidance to ACPOs for rejecting and recording late offer submissions in accordance with A.R.S. § 41-2533.
R2-7-B308	Provides guidance to ACPOs for cancelling a solicitation after receipt of offers and before contract award in accordance with A.R.S. § 41-2539.
R2-7-B309	Provides guidance to ACPOs for awarding a single contract, re-soliciting, or cancelling when only one offer is received in accordance with A.R.S. § 41-2533 and A.R.S. § 41-2534.
R2-7-B310	Provides guidance to ACPOs regarding mistakes after offer opening and before contract award in accordance with A.R.S. § 41-2533.
R2-7-B311	Provides guidance to ACPOs to extend an offer acceptance period of a solicitation in accordance with A.R.S. § 41-2533.
R2-7-B312	Provides guidance to ACPOs to evaluate and determine responsiveness and responsibility of an Offeror's bid for award consideration in accordance with A.R.S. § 41-2533.
R2-7-B313	Provides guidance to ACPOs regarding the process of assessing responsibility of an offeror before award of a solicitation in accordance with A.R.S. § 41-2540.
R2-7-B314	Provides guidance to ACPOs to ensure award of a solicitation to only a responsible and responsive offeror(s) with the procurement file available for public inspection in accordance with A.R.S. § 41-2533 and A.R.S. § 41-2540.
R2-7-B315	Provides guidance to ACPOs to acknowledge mistakes after contract award in accordance with A.R.S. § 41-2532 and A.R.S. § 41-2533.
R2-7-B316	Provides guidance to ACPOs to solicit technical offers in accordance with A.R.S. § 41-2532.
R2-7-C301	Describes the minimum requirements of a solicitation that is released to the public as a competitive sealed proposal.
R2-7-C302	Provides the ability to hold pre-offer conferences.
R2-7-C303	Provides the ability to amend a solicitation and defines what can be amended as well as assigns responsibilities to procurement officers and offerors.
R2-7-C304	Provides the respondent the ability to change or withdraw their offer before the opening of the solicitation.
R2-7-C305	Provides the agencies the ability to cancel a solicitation before it is opened if it is in the best interest of the state. Also provides requirements for taking this action.

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Rule	Objective
R2-7-C306	Defines the process for the solicitation opening.
R2-7-C307	Defines when a solicitation response would be considered.
R2-7-C308	Provides the ACPO the ability to cancel a solicitation and what requirements when there is a need to cancel before an award of a contract.
R2-7-C309	Outlines what is necessary to ensure the state has an offer from a responsible and responsive supplier and is not likely to be at risk of being overcharged on a contract when only one offer is received.
R2-7-C310	Allows the ACPO to extend an offer period if the evaluation phase will exceed the period listed in the solicitation.
R2-7-C311	Defines the categories under which an offer can be deemed not susceptible.
R2-7-C312	Defines the areas in which an offeror can be deemed non-responsible and the recourse and requirements that the ACPO must comply with for the determination.
R2-7-C313	Provides the ACPO the ability and provides parameters for clarification of an offer.
R2-7-C314	Provides the ACPO the ability to conduct negotiations and the requirements of the negotiation process to assure fairness and integrity of the procurement.
R2-7-C315	Outlines the requirements for revisions and best and final offers and in the event a mistake was made during the process, provides the ability to resolve those mistakes. The rule provides guidance on conduct for both the ACPO and offeror.
R2-7-C316	Defines the ACPO's role in the evaluation of offers and provides the ability for an evaluation committee to review offers and to provide findings to the ACPO.
R2-7-C317	States the basis for the award and written determination. Also includes the process for notifying offerors and making the procurement file publicly available within three days after the award of the contract.
R2-7-C318	Provides the parameters for the ACPO and Offeror to resolve a mistake or to cancel when it is discovered after the contract has been awarded.
R2-7-D301	Outlines the processes for purchases under the formal solicitation threshold but above nominal value as defined in the referenced statute.

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Rule	Objective
R2-7-D302	Establishes minimum standards for the competitive process for procurements above the nominal value threshold, but below the formal solicitation threshold.
R2-7-D303	Establishes minimum standards for the award from the competitive process for procurements above the nominal value threshold, but below the formal solicitation threshold.
R2-7-D304	Establishes the standard and authority for awarding nominal-value contracts.
R2-7-E301	Establishes justification standards for non-competitive purchases exceeding the formal solicitation threshold.
R2-7-E302	Establishes minimum standards for purchases that exceed the formal solicitation threshold when emergency circumstances exist.
R2-7-E303	Establishes minimum standards for purchases exceeding the formal solicitation threshold where circumstances that preclude normal competition exist.
R2-7-F301	Clarifies the statement of qualifications process when purchasing certain professional services such as services of clergy, physicians, dentists, legal counsel or certified public accountants.
R2-7-F302	Details the requirements for the solicitation process that are required of the ACPO.
R2-7-F303	Explains the changes allowed within a solicitation amendment process and the requirements for the ACPO and the offerors.
R2-7-F304	Explains the steps related to the cancellation of a solicitation.
R2-7-F305	Describes the steps related to the receipt and opening of offers and related procedures.
R2-7-F306	Clarifies the timeliness of offer modification or withdrawal of offer as well as the responsibilities of the offeror and the ACPO.
R2-7-F307	Clarifies determination related to late offers.
R2-7-F308	Describes broadly the process for negotiations with the offeror.
R2-7-F309	Describes the steps for awarding contracts.
R2-7-F310	Describes the process when mistakes are discovered after contract award.
R2-7-G301	Establishes authority and clarifies confidentiality protections for information gathered for procurement planning purposes.
R2-7-G302	Establishes standards for no-cost contracts for innovative/unique goods or services that may result in future direct purchases, as well as the restrictions on the state's financial obligations.

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Rule	Objective
R2-7-G303	Establishes standards for contracting directly with a supplier that solicits the State without an initial state request or solicitation.
R2-7-G304	Establishes authority and standards for contracting directly with a supplier from a federal General Services Administration (GSA) contract/schedule.
R2-7-G305	Establishes authority and standards for contracting with a private company to finance State assets/services while basing fee payments on predetermined performance improvement metrics.
R2-7-401	Authorizes agencies with a delegation of authority from the SPA to prepare specifications for goods, services, or construction.
R2-7-402	Provides for the use of specifications that promote competition and limit use of restrictive specifications.
R2-7-403	Limits the use of brand-name specifications to circumstances in which a brand name is required to fulfill a state need.
R2-7-404	Prevents unfair benefit to anyone involved in preparing specifications.
R2-7-506	Outlines the requirements for an appropriate amount of bid security and relevant factors associated with bid security.
R2-7-508	Outlines the requirements for payment and performance bonds.
R2-7-509	Outlines the requirements for use of substitute security instead of payment retention.
R2-7-510	Outlines the form requirements for use of substitute security.
R2-7-501	Discusses procurement methods for specified professional and construction services..
R2-7-502	Ensures procurement and contract administration as required by A.R.S. 41-790.
R2-7-503	Outlines the factors used to determine the use of alternate project delivery methods.
R2-7-504	Outlines the requirements for the solicitation notice.
R2-7-505	Outlines the requirements for selection committees.
R2-7-507	Outlines the requirements and steps to take if a mistake or suspected mistake is discovered after opening and before contract award.
R2-7-511	Outlines the process for job order contracting.
R2-7-601	Requires that the ACPO include sufficient clauses in contracts to ensure state interests are met.
R2-7-602	Prohibits transfer or assignment of contract rights or obligations without ACPO approval.
R2-7-603	Should a contractor be approved for a name change, the rule requires an amendment to the contract be issued by the ACPO. No other terms and conditions are to be changed.

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Rule	Objective
R2-7-604	Provides guidelines for change orders and contract amendments.
R2-7-605	Outlines and provides guidelines and restrictions for multi-term contracts and requires justification rationale for deviation or variance from those guidelines.
R2-7-606	Outlines guidelines for terms and conditions for use in solicitations and contracts.
R2-7-607	Mandates use of statewide contracts for all state governmental units unless authorized by the SPA.
R2-7-608	Limits the award of contracts to the least number of suppliers necessary to meet the requirements of the state or the cooperative procurement members.
R2-7-702	Explains the process to be used by the ACPO to ensure contract prices are fair and reasonable based on adequate competition, supported by established catalog or market prices, set by law or rule, or supported by relevant historical price data.
R2-7-703	Directions for suppliers to submit certified pricing data via binding written documentation as directed by the ACPO to determine if the costs or pricing are fair and reasonable.
R2-7-704	Directions for suppliers to be cognizant of consequences and remedies for failing to submit cost or pricing data in the form and within required timeframes. Establishes that failure of an offeror to submit cost or pricing data may be grounds for rejection of a bid or offer.
R2-7-705	Establishes a process for the ACPO to remediate contracts upon the submission of price data that is inaccurate, incomplete, or outdated, as well as provides the offeror a fair appeal to the dispute of the existence of defective data.
R2-15-301	Establishes definitions for Article 8.
R2-15-303	Governs disposition of excess and surplus materials.
R2-15-304	Establishes reporting and recordkeeping requirements related to nonexpendable materials, real property, improvements and other items.
R2-15-305	Establishes the reporting process for lost, stolen, or destroyed items.
R2-15-306	Establishes the process for acquiring federal property.
R2-15-307	Gives the surplus property administrator the authority to determine eligibility to receive either federal or state surplus materials.
R2-15-308	Establishes guidelines for fees and charges on the transfer of property.
R2-15-309	Establishes the guidelines for handling the Surplus Materials Revolving Funds (SMRF).
R2-15-310	Establishes guidelines for funds reimbursements.

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Rule	Objective
R2-7-A901	Provides guidelines and timelines for any interested party (one who makes an offer or has an economic interest) to protest a solicitation or contract award.
R2-7-A902	Provides guidelines and timelines for stay of procurements during a protest of a solicitation or contract award.
R2-7-A903	Provides guidelines and timelines for resolving a protest of a solicitation or contract award.
R2-7-A904	Outlines the authority and options for the ACPO when sustaining a protest of a solicitation or contract award.
R2-7-A905	Provides guidelines for timelines and steps to any interested party to appeal the decision of the ACPO.
R2-7-A906	Provides immediate notification of the appeal to all offerors.
R2-7-A907	Provides guidelines for a stay of the appeal to the director and allows determination if the contract award would be in the best interest of the state while the protest/appeal is resolved.
R2-7-A908	Provides guidance to the agency in responding to the appeal with required documents, timelines and the possibility for an extension, if needed.
R2-7-A909	Provides guidance for the director in case the appeal is sustained.
R2-7-A910	Provides guidance regarding informal settlement conferences prior to the final administrative decision. If the director participates in the settlement conference, the director cannot make the final decision for the protest. Ensuring a neutral decision is made by the director or the director's designee.
R2-7-A911	Provides direction for the director for dismissal, in case the appeal is denied in whole or in part.
R2-7-A912	Provides options for the director to resolve appeals.
R2-7-B901	Provides guidance for a claimant (any case when a contractor argues that the state owes money) how to submit a claim, and authority for the ACPO to resolve the claim.
R2-7-B902	Provides guidance for the ACPO on resolving the claim and identifies the steps for the ACPO to take action once the claim is filed.
R2-7-B903	Provides direction for the claimant in case the ACPO does not issue a decision within 60 days.
R2-7-B904	Provides guidance and timeframe for the claimant and the ACPO in case of an appeal to the director.
R2-7-B905	Provides guidance in case of a claim by a state agency against a contractor.
R2-7-C901	Provides guidance that only the ADOA director has the authority to suspend or debar suppliers.
R2-7-C902	Provides guidance for the director to investigate and propose potential debarment.
R2-7-C903	Defines maximum debarment period and reciprocity for debarment from other organizations.

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Rule	Objective
R2-7-C904	Provides the requirement for the notification related to the debarment process and steps for the supplier subject to the potential debarment.
R2-7-C905	Holds a company liable for actions of a subcontractor or an employee.
R2-7-C906	Directions of when a company may be reinstated after a debarment.
R2-7-C907	Establishes that the director may allow limited participation of debarred companies in case the participation is advantageous to the State. The limitations must be defined in a written determination.
R2-7-C908	Authorizes the director to suspend a person and allows a conduct to be attributed to an affiliate or another person.
R2-7-C909	Defines the period of suspension without a notification.
R2-7-C910	Defines steps for the director for notifying the suspended individual along with directions for requesting hearing.
R2-7-C911	Provides guidance that the director shall maintain a list of debarred and suspended individuals.
R2-7-D901	Provides guidance for the director to resolve a dispute by settlement hearing or negotiations or alternative dispute resolutions.
R2-7-D902	Provides guidance for interested parties to review the director's decision.
R2-7-1001	Defines the process for entering into cooperative purchasing agreements to be followed by ACPOs and the SPA.
R2-7-1002	Ensures that ACPOs review and understand their responsibility with regard to cooperative purchasing agreements and to limit the liability of the State.
R2-7-1003	Establishes minimum due diligence standards for ACPOs regarding the use and adoption of cooperative contracts.
R2-7-1004	Establishes requirements for the composition of the state set-aside committee and minimum meeting frequency.
R2-7-1005	Establishes the role of the set-aside committee as the certifying authority for the Set-Aside Procurement Program.
R2-7-1006	Establishes the minimum required information to ensure certification compliance with the Set-Aside Procurement Program's enabling statutes.
R2-7-1007	Establishes the authority and procedure for the committee to recommend a mandatory state use of set-aside contracts.

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Rule	Objective
R2-7-1009	Explicitly establishes authority for ACPOs to contract directly with Set-Aside Procurement Program participants.
R2-7-1010	Explicitly establishes appeal procedures for Set-Aside Procurement Program applications.

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

With a few exceptions, the rules have effectively allowed the Department to administer the Arizona Procurement Code for more than 220 state governmental units (agencies, boards, and commissions). The rules offer greater efficiency in public procurement; reduced operating costs for public procurement; increased opportunities for small, minority, and women-owned businesses; improved understanding and ease of use for government agencies and suppliers; and increased access to procurement opportunities and information.

However, the following rules have been identified to be ineffective in achieving their objectives and in need of revision:

Rule	Review
R2-7-501	<p>The rule conflicts with the following statutes and has caused confusion:</p> <ul style="list-style-type: none"> ● A.R.S. § 41-2533. Competitive sealed bidding; ● A.R.S. § 41-2535. Procurements not exceeding a prescribed amount; small businesses; simplified construction procurement program; ● A.R.S. § 41-2578. Procurement of specified professional and construction services; definition; ● A.R.S. § 41-2579. Procurement of multiple contacts for certain job-order-contracting construction services and certain professional services; definition; and/or ● A.R.S. § 41-2581. Procurement of certain professional services.

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Rule	Review
R2-7-511	<p>The rule is cumbersome administratively and contrary to the nature of job order contracting being used to expedite projects. Subsections (B)(1), (B)(2), and (C)(2) state that the chief procurement officer would have to obtain an estimate for every job order and make a written determination. This appears to conflict with the expedient nature of using job order contracting. In addition, Subsection (C)(1) would require a design professional to provide an estimate for every job order, thus increasing the cost of job orders not requiring design professional services.</p> <p>It has been identified that subsection (F) is cumbersome in execution upon completion of a job order. In addition, subsection (G) applies to rules under invitation for bids. The procurement for job order contracting is governed by A.R.S. § 41-2579.</p>

4. Are the rules consistent with other rules and statutes? Yes No

Section 41-2511, A.R.S., authorizes the Director to adopt rules consistent with this chapter, governing the procurement and management of all materials, services, and construction procured by the State and the disposal of materials. The rules in Articles 1 through 13 are consistent with state and federal statutes and rules, with the exception of the following:

Rule	Review
R2-7-501	<p>The rule conflicts with the following statutes it references:</p> <ul style="list-style-type: none"> ● A.R.S. § 41-2533. Competitive sealed bidding; ● A.R.S. § 41-2535. Procurements not exceeding a prescribed amount; small businesses; simplified construction procurement program; ● A.R.S. § 41-2578. Procurement of specified professional and construction services; definition; ● A.R.S. § 41-2579. Procurement of multiple contacts for certain job-order-contracting construction services and certain professional services; definition; and/or ● A.R.S. § 41-2581. Procurement of certain professional services.



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Rule	Review
R2-7-511	The rule conflicts with statute A.R.S. § 41-2579. Procurement of multiple contacts for certain job-order-contracting construction services and certain professional services; definition.

5. Are the rules enforced as written? Yes No

The Department continues to enforce the rules. Under A.R.S. § 41-2511, the State Procurement Office (SPO) serves as the central procurement authority for state governmental units. In this role, SPO administers the enforcement of the Arizona Procurement Code, applicable Executive Orders, SPO Technical Bulletins, and SPO Standard Procedures for 220 state governmental units.

SPO is also entrusted with the responsibility of delegating procurement authority and monitoring procurement compliance of state governmental units. When considering procurement authority delegation dollar limits and other restrictions, SPO reviews the state governmental units’ procurement history and future needs, as well as their procurement knowledge and experience.

Furthermore, as part of a post-procurement reform environment, SPO maintains a robust compliance review program. In the past two years, the SPO Compliance unit has further developed the compliance review program and has established an expectation that state governmental units will perform better with the Compliance unit’s work and the control self-assessment utilized by the state governmental units. Findings and appropriate recommendations provide a basis for improvement and consistent actions to ensure their compliance with the Arizona Procurement Code. SPO has also developed training programs for procurement professionals throughout the State.

However, the Five Year Rule Review committee reviewed the following rules and identified that in order to be enforced effectively, improvements to the rules are necessary or their effectiveness are yet to be recognized:

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Rule	Review
R2-7-501	See responses to Questions 3 and 4.
R2-7-511	See responses to Questions 3 and 4.

6. Are the rules clear, concise, and understandable? Yes No

Generally, based on input from stakeholders, the rules are clear, concise, and understandable so that they establish standards and expectations that are appropriate for state governmental agencies to engage in procurement and contracting activities with commercial organizations that have an understanding of government organization business that serve a range of constituents and citizens. However, the following rules were identified as not clear, not concise, or not easy to understand:

Rule	Review
R2-7-C302	The rule references an incorrect rule of “R2-7-B303”, which is for solicitation amendment of a competitive sealed bidding. The rule should reference “R2-7-C303”, which is for solicitation amendment of competitive sealed proposals.
R2-7-501	See responses to Questions 3 and 4.
R2-7-505	Subsection (C) appears unclear as A.R.S. §§ 41-2578 and 41-2579 do not have amounts to exceed.
R2-7-B901	Subsection (A) is unclear if supplier or claimant should submit a claim when there is no contract or any time when the state owes money (i.e. a purchase order was not created). It is also unclear when the start of the 180 days begins, as it may not be reasonable or acceptable within the statutes of limitations.
R2-7-B902	Subsection (A) states that the ACPO issues a final decision within 60 days upon a written request, which means that until that request is made by a supplier, the contract claim will remain open and unresolved. It would be beneficial to state a more limited timeframe for issuance of the final decision.

The following rule is clear, concise, and understandable. However, it could be improved upon for further clarity and consistency.

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Rule	Review
R2-7-G303	Note that the term “project” is not defined and appears to mirror language in R2-7-G302.

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

Current leadership of the SPO joined the Department in June 2018. Written criticisms of the rules may no longer be available or accessible (e.g. sent to a specific email address or sent to personnel who is no longer employed), but it is notable that non-written feedback from state government procurement employees were received as discussed by the Five Year Rule Review committee:

Rule	Review
R2-7-101	The 2015 Five Year Rule Review included written comments focused on proposed rule changes to the definition of “procurement file”. SPO’s response was to remove the proposed changes to the definition to allow for further stakeholder discussion. At that time, there was a need to introduce a process for implementing the goals of the legislation that identified significant procurement role activity. Recently, SPO has further refined how disclosure of this activity can be specifically identified, to avoid conflicts of interest at the beginning stages of the procurement process and create broader awareness on the topic through training. These efforts have made rulemaking regarding this issue unnecessary.
R2-7-511	The Department’s General Services Division (GSD) has been approached by a supplier to clarify the rule and requests that the ceiling for job order contracting be raised to a range of \$3,000,000 - \$4,000,000; GSD recommends \$2,000,000.
R2-7-B901	A Superior Court Commissioner found that the 180-day limitation period in this section of the Procurement Code was not enforceable, because it is not clear when “a claim arises” and the rule does not use the term “and not afterward” to indicate that there is a consequence for filing a claim after 180 days has passed.

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Rule	Review
R2-7-1004	The Department received input and feedback from the certified non-profit agency community and stakeholders on how the committee should operate and the composition of subcommittees.
R2-7-1007	Stakeholders of the Set-Aside Procurement Program have raised a concern over how “fair market price” is determined. However, recently adopted SPO Technical Bulletins have provided more structure as to how this term can be defined by the committee.
R2-7-1010	There was criticism received related to the resolution of a dispute between the set-aside committee and a certified non-profit agency. It centered on whether the set-aside committee chair's actions were inappropriate, given the chair is the initial determinant of appeals and there was a case in which the basis of the appeal was rooted in the chair’s actions and decisions. In that instance, however, the appointed chair recused himself and the SPA acted as the chair. These concerns can be addressed at the SPO Technical Bulletin or Standard Procedure level, or through training, instead of through new or revised rules.

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

The last rule changes became effective on February 2, 2015, which included an economic, small business, and consumer impact statement. The parties affected by the last rulemaking included state government officials and managers, state government procurement employees, suppliers including small businesses and non-profit organizations that provide services to the state, and associations that represent various business groups, attorneys, and local government units (cities, counties, and school districts). For this cycle of the Five Year Rule Review, the committee reviewed the below rules to determine their impact on the economy, small businesses, and consumers. The following review of these rules is consistent with the 2015 review which found that the rules were clear, concise, understandable, and imposed the least burden on stakeholders necessary to achieve the rule’s objectives.

For this cycle of the Five Year Rule Review, the committee reviewed the following rules and determined the following impact of the rules on the economy, small businesses, and consumers:

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Rule	Review
R2-7-B301	Setting minimum requirements for solicitations provides a fair, equitable, and transparent process to ensure opportunities are provided to all suppliers (including small businesses) to conduct business with the state, and maximize competition. This approach optimizes the use of taxpayer dollars.
R2-7-B306	Setting minimum requirements for opening and the receipt of offers provide a fair, equitable, and transparent process to ensure opportunities are provided to all suppliers (including small businesses) to conduct business with the state, and maximize competition.
R2-7-B309	This rule ensures that if only one offer is received, the State is not obligated to enter into a contract with that offeror unless the pricing is fair and reasonable and the terms and conditions are fair. This approach ensures that taxpayer funds are only spent if the offer has met standards for contracting and pricing.
R2-7-B312	Evaluation of received bids is responsive and responsible to ensure the award is in the best interest of the state.
R2-7-B314	Ensures transparency in the State's procurement process.
R2-7-1001	Cooperative purchasing tends to favor larger businesses that have large capacity. Additionally, it has been shown that small businesses have difficulty to adequately service the needs of multiple agencies and various locations.

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

None were deemed necessary during this cycle of the review, as the State experienced multiple responses to most of its solicitations.

10. Has the agency completed the course of action indicated in the agency's previous five-year-review report?

Prior to the previous Five Year Rule Review in 2015, rule changes were unanimously approved by the Governor's Regulatory Review Council at their public meeting on December 2, 2014, and these changes were posted to the Administrative Register by the Secretary of State's Office on December 19, 2014. The final rulemaking became

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effective on February 2, 2015. In addition, the Arizona Procurement Code was posted on the SPO website with an effective date of February 2015, and updated versions were posted in July 2015, and July 2020.

The 2015 Five Year Rule Review stated that the Department plans to continue discussions with interested stakeholders to modify the definition of “procurement file” in R2-7-101(37). There has been little to no feedback on the definition of procurement file, and procurement files have been readily available on contract awards for years through the State’s eProcurement system (which is publicly accessible).

SPO planned to focus on the business case for supplier performance and supplier management to address developing rules in compliance with A.R.S. § 41-2612(2) (supplier performance and evaluation of past performance). That was a course of action during the last review cycle, which was outranked by other priorities of a leadership team that was quite new in 2015, which went through iterations up until 2018. Rather than rulemaking actions, SPO has spent the last two years focused on rebuilding staff capabilities, developing procurement training for state governmental units, solidifying the cooperative purchasing efforts, and stabilizing and improving upon the implementation and integration of a new e-procurement system (the Arizona Procurement Portal went live in October 2018) into the statewide procurement function. Lastly, the public health emergency that began in March 2020, also brought new focuses and priorities. These efforts included the efficient purchasing of personal protective equipment, needed items for the new state employee work setting, and delivery of agency services, all from a disrupted supply chain.

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

The rules in Title 2, Chapter 7 of the Arizona Administrative Code, reduce the uncertainty, and therefore the costs, associated with contracting with the State. They were designed to lower operating costs for state agencies and generally impose the least burden on both agencies and suppliers that do business with the State. Among the stated

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goals of the statutes which authorize these rules is the simplification and modernization of procurement law, and the fostering of “effective broad-based competition within the free enterprise system.” Laws 1984, Ch. 251. Both of these aims are generally met by the current rules.

Each stage of the procurement process is circumscribed by the rules: from the notice provided to suppliers to the process of awarding state contracts, and even protesting some awards should a party take issue with the process. Suppliers are given the certainty that the procurement officers with whom they are doing business have evaluated their bids and offers with the rigour dictated by the rules, and they know that if procurement officers do not follow the process, suppliers have the right to protest. These rules allow state procurement officers to inform suppliers about the agency’s requirements, how bids or offers will be evaluated, and after contract award, suppliers are given all the information used during the evaluation process automatically (which reduces the need for public records requests). The goal of the rules is to motivate more companies to do business with the State, which therefore increases competition for state business and creates the best value for state tax dollars. The rules lower costs for state agencies and generally impose the least burden and costs on both agencies and suppliers that do business with the State.

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

There are no corresponding federal laws that are applicable. The rules are promulgated under state law.

13. **For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:**

The rules were adopted before July 29, 2010, and do not require the issuance of a regulatory permit or license.

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14. Proposed course of action

SPO will continue to work with state governmental unit customers to ensure that the rules not only meet the objectives of the SPO, but also consider the needs of other state agencies, boards, and commissions to procure materials and services needed for these entities to carry out their agency missions. Additionally, the SPO is sensitive to barriers to entry by potential suppliers to the state. Therefore, SPO provides coaching and counseling to procurement professionals and operational leaders within the state to promote fairness, transparency, and competition. With greater transparency, fairness, and accountability, the SPO anticipates a more competitive marketplace for prospective and existing suppliers.

The Department plans to conduct expedited rule-making to reduce redundancies, waste, and antiquated rules identified herein. If granted an exception from the rulemaking moratorium, the Department will submit a Notice of Final Expedited Rulemaking to the Office of the Governor, in compliance with Executive Order 2021-02, within 180 days of the date of the exception, no later than April 2022.

Based on the committee’s Five Year Rule Review, the Department proposes the following changes to rules that are in Articles 1, 3, 4, 5, 9, and 10 of the Arizona Procurement Code:

Rule	Review
R2-7-B306	Recommend renewal of the rule with added clarification in the subsections regarding receipt of, opening of, and recording of offers via the e-procurement system.
R2-7-B307	Recommend renewal of the rule with added clarification in subsection (C) regarding submissions via the e-procurement system.
R2-7-C302	Recommend renewal of the rule with revision regarding the correct reference to solicitation amendment for competitive sealed proposals.
R2-7-C306	Recommend renewal of the rule with added clarification in the subsections regarding receipt of, opening of, and recording of offers via the e-procurement system.

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Rule	Review
R2-7-C307	Recommend renewal of the rule with added clarification in subsection (C) regarding submissions via the e-procurement system.
R2-7-C315	Recommend renewal of the rule with revision by eliminating SPA’s written determination for a second best and final offer (BAFO), as one BAFO may not be in the state’s best interest. This step also potentially burdens the procurement process by seeking permission from the SPA. Thus the contracting process can be delayed and may increase costs of contracting for both agencies and prospective suppliers/proposers.
R2-7-501	Recommend repealing the rule. The statutes for these activities are clear, concise, and understandable. The rule is in direct conflict with these statutes and does not add value or guidance.
R2-7-504	Recommend renewal of the rule with removal of “publication and advertise”. It is an administrative burden. Little value is added as solicitations are posted publicly through the e-procurement system and other means. In addition, there is little to no evidence that bidders are responding to newspaper advertisements.
R2-7-505	Recommend renewal of the rule with removal of subsection (C) because it is unclear that A.R.S. §§ 41-2578 and 41-2579 do not have amounts to exceed.
R2-7-511	Recommend renewal of the rule with revision regarding job order contracting. See responses to Questions 3, 4, and 7.
R2-7-B901	Recommend renewal of the rule with revision to bring clarity to the consequences to contractors for failure to bring a timely claim. See response to Question 7.
R2-7-B902	Recommend renewal of the rule with added clarification regarding the time period for negotiation with the ACPO. It would also be beneficial if the rule included a firm timeframe for issuance of the final decision regarding the claim. This clarification would be positive for the supplier community as the goal of a revised rule would be to remove existing ambiguity.



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 2. Administration

Chapter 7. Department of Administration - State Procurement Office

Sections, Parts, Exhibits, Tables or Appendices modified
R2-7-205, R2-7-208, R2-7-701, R2-7-1008

REMOVE Supp. 14-4
Pages: 1 - 42

REPLACE with Supp. 17-2
Pages: 1 - 42

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
Telephone: (602) 542-2058
Website: <https://grrc.az.gov/>

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.

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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
June 30, 2017

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. 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.

EXEMPTIONS FROM THE APA

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

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

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

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

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

EXEMPTIONS AND PAPER COLOR

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

PERSONAL USE/COMMERCIAL USE

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

TITLE 2. ADMINISTRATION

CHAPTER 7. DEPARTMENT OF ADMINISTRATION - STATE PROCUREMENT OFFICE

(Authority: A.R.S. § 41-2511 et seq.)

Chapter 7 consisting of Article 1, Sections R2-7-101 thru R2-7-104; Article 2, Sections R2-7-201 thru R2-7-203; Article 3, Sections R2-7-301 thru R2-7-334, R2-7-336 thru R2-7-370; Article 4, Sections R2-7-401 thru R2-7-405, R2-7-407 thru R2-7-411; Article 5, Sections R2-7-501, R2-7-503 thru R2-7-515; Article 7, Section R2-7-701; Article 8, Sections R2-7-801 thru R2-7-810; Article 9, Sections R2-7-901 thru R2-7-937; Article 10, Sections R2-7-1001 thru R2-7-1008 adopted effective April 3, 1985 (Supp. 85-2).

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ARTICLE 1. GENERAL PROVISIONS**R2-7-101. Definitions**

In this Chapter, unless the context otherwise requires:

1. "Affiliate" means any person whose governing instruments require it to be bound by the decision of another person or whose governing board includes enough voting representatives of the other person to cause or prevent action, whether or not the power is exercised. The term applies to persons doing business under a variety of names, persons in a parent-subsidiary relationship, or persons that are similarly affiliated.
2. "Agency chief procurement officer" means the procurement officer within a state governmental unit, who is acting under specific, written authority from the state procurement administrator in accordance with R2-7-202 or any person delegated that authority, in writing, under R2-7-203. The term does not include any other person within a state governmental unit who does not have this written delegation of authority.
3. "Aggregate dollar amount" means purchase price, including taxes and delivery charges, for the term of the contract and accounting for all allowable extensions and options.
4. "Alternate project delivery methods" means design-build, construction-management-at-risk, and job-order-contracting construction services.
5. "Arizona Procurement Code" means A.R.S. Title 41, Chapter 23 and this Chapter.
6. "Arizona state contract" means a contract established or authorized by the state procurement administrator for use by state governmental units and eligible procurement units.
7. "Award" means a determination by the state that it is entering into a contract with one or more offerors.
8. "Best and Final Offer" means a revision to an offer submitted after negotiations are completed that contain the offeror's most favorable terms for price, service, and products to be delivered.
9. "Bid" means an offer in response to solicitation.
10. "Bidder" means "offeror" as defined in R2-7-101(34).
11. "Brand name or equivalent specification" means a written description that uses one or more manufacturers' product name or catalog item, to describe the standard of quality, performance, and other characteristics that meet state requirements and provides for submission of equivalent products or services.
12. "Brand name specification" means a written description limited to a list of one or more items by manufacturers' product name or catalog item to describe the standard of quality, performance, and other characteristics that meet state requirements.
13. "Clergy" includes the same persons described in A.R.S. § 32-3271(A)(3).
14. "Component" means a part of a manufactured product.
15. "Contract amendment" means a written modification of a contract under A.R.S. § 41-2503(8) or a unilateral exercise of a right contained in the contract.
16. "Cost data" means information concerning the actual or estimated cost of labor, material, overhead, and other cost elements that have been incurred or will be incurred by the offeror or contractor in performing the contract.
17. "Cost-plus-a-percentage-of-cost contract" means the parties to a contract agree that the fee will be a predetermined percentage of the cost of work performed and the contract does not limit the cost and fee before authorization of performance.
18. "Day" means a calendar day and time is computed under A.R.S. § 1-243, unless otherwise specified in the solicitation or contract.
19. "Debarment" means an action taken by the director under R2-7-C901 that prohibits a person from participating in the state procurement process.
20. "Defective data" means data that is inaccurate, incomplete, or outdated.
21. "Dentist" means a person licensed under A.R.S. Title 32, Chapter 11.
22. "Descriptive literature" means information available in the ordinary course of business that shows the characteristics, construction, or operation of an item or service offered.
23. "Eligible procurement unit" means a local public procurement unit, any other state or agency of the United States, or a nonprofit educational or public health institution, including any certified non-profit agency that serves individuals with disabilities as defined in A.R.S. § 41-2636, that is eligible under a cooperative agreement to use Arizona state contracts.
24. "Filed" means delivery to an agency chief procurement officer or to the director, whichever is applicable, in a manner specified by the Arizona Procurement Code or a solicitation.
25. "Finished goods" means units of a manufactured product awaiting sale.
26. "Force account" as used in A.R.S. § 41-2572, means work performed by the state's regularly employed personnel.
27. "Governing instruments" means legal documents that establish the existence of an organization and define its powers, including articles of incorporation or association, constitution, charter, by-laws, or similar documents.
28. "In writing" has the same meaning as "written" or "writing" in A.R.S. § 47-1201, which includes printing, typewriting, electronic transmission, facsimile, or any other intentional reduction to tangible form.
29. "Interested party" means an offeror or prospective offeror whose economic interest is affected substantially and directly by issuance of a solicitation, an award or loss of an award. Whether an offeror or prospective offeror has an economic interest depends upon the circumstances of each case.
30. "Legal counsel" means a person licensed as an attorney by the Arizona Supreme Court.
31. "May" means something is permissive.
32. "Negotiation" means an exchange or series of exchanges between the state and an offeror or contractor that allows the state or the offeror or contractor to revise an offer or contract, unless revision is specifically prohibited by this Chapter.
33. "Offer" means a response to a solicitation.
34. "Offeror" means a person who responds to a solicitation.
35. "Physician" means a person licensed under A.R.S. Title 32, Chapters 7, 8, 13, 14, 15.1, 16, or 17.
36. "Price data" means information concerning prices, including profit, for materials, services, or construction substantially similar to the materials, services, or construction to be procured under a contract or subcontract. In this definition, "prices" refers to offered selling prices, historical selling prices, or current selling prices of the items to be purchased.
37. "Procurement file" means the official records file of the director whether located in the office of the director or at

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a public procurement unit. The procurement file shall include (electronic or paper) the following:

- a. List of notified vendors,
 - b. Final solicitation,
 - c. Solicitation amendments,
 - d. Bids and offers,
 - e. Offer revisions and best and final offers,
 - f. Discussions,
 - g. Clarifications,
 - h. Final evaluation reports, and
 - i. Additional information, if requested by the agency chief procurement officer and approved by the state procurement administrator.
38. "Procurement request" means the document that initiates a procurement.
 39. "Proposal" means an offer submitted in response to a solicitation.
 40. "Prospective offeror" means a person that expresses an interest in a specific solicitation.
 41. "Raw materials" means goods, excluding equipment and machinery, purchased for use in manufacturing a product.
 42. "Reverse auction" means a procurement method in which offerors are invited to bid on specified goods or services through online bidding and real-time electronic bidding. During an electronic bidding process, offerors' prices or relative ranking are available to competing offerors and offerors may modify their offer prices until the closing date and time.
 43. "Shall" means something is mandatory.
 44. "Small business" means a for-profit or not-for-profit organization, including its affiliates, with fewer than 100 full-time employees or gross annual receipts of less than \$4 million for the last complete fiscal year.
 45. "Solicitation" means an invitation for bids, a request for technical offers, a request for proposals, a request for quotations, or any other invitation or request issued by the purchasing agency to invite a person to submit an offer.
 46. "Source selection method" means a process that is approved by an agency chief procurement officer and used to select a person to enter into a contract for procurement.
 47. "State procurement administrator" means the individual appointed by the director as a chief procurement officer for the state, or a state procurement administrator's authorized designee. A different title may be used for this position.
 48. "State procurement office" means an office that acts under the authority delegated to the state procurement administrator.
 49. "Suspension" means an action taken by the director under R2-7-C901 that temporarily disqualifies a person from participating in a state procurement process.
 50. "Trade secret" means information, including a formula, pattern, device, compilation, program, method, technique, or process, that is the subject of reasonable efforts to maintain its secrecy and that derives independent economic value, actual or potential, as a result of not being generally known to and not being readily ascertainable by legal means.

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Amended effective April 2, 1993 (Supp. 93-2). Section repealed; new Section

made by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1). Amended by final rulemaking at 18 A.A.R. 3118, effective January 7, 2013 (Supp. 12-4). Amended by final rulemaking at 20 A.A.R. 3510, effective February 2, 2015 (Supp. 14-4).

R2-7-102. Written Determinations

- A. If a written determination is required under applicable law, an agency chief procurement officer shall include the basis for the action taken in the written determination.
- B. The agency chief procurement officer shall place the written determination into the purchasing agency's procurement file.
- C. A procurement file located at a state agency is considered the official records file of the director as required by A.R.S. § 41-2502, if the file is maintained by an agency chief procurement officer.

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Amended effective April 2, 1993 (Supp. 93-2). Section repealed; new Section made by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1).

R2-7-103. Confidential Information

- A. If a person wants to assert that a person's offer, specification, or protest contains a trade secret or other proprietary information, a person shall include with the submission a statement supporting this assertion. A person shall clearly designate any trade secret and other proprietary information, using the term "confidential". Contract terms and conditions, pricing, and information generally available to the public are not considered confidential information under this Section.
- B. Until a final determination is made under subsection (C), an agency chief procurement officer shall not disclose information designated as confidential under subsection (A) except to those individuals deemed by an agency chief procurement officer to have a legitimate state interest.
- C. Upon receipt of a submission, an agency chief procurement officer shall make one of the following written determinations:
 1. The designated information is confidential and the agency chief procurement officer shall not disclose the information except to those individuals deemed by the agency chief procurement officer to have a legitimate state interest;
 2. The designated information is not confidential; or
 3. Additional information is required before a final confidentiality determination can be made.
- D. If an agency chief procurement officer determines that information submitted is not confidential, a person who made the submission shall be notified in writing. The notice shall include a time period for requesting a review of the determination by the state procurement administrator.
- E. An agency chief procurement officer may release information designated as confidential under subsection (A) if:
 1. A request for review is not received by the state procurement administrator within the time period specified in the notice; or
 2. The state procurement administrator, after review, makes a written determination that the designated information is not confidential.

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective

tive April 3, 1985 (Supp. 85-2). Section repealed; new Section made by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1).

R2-7-104. Repealed

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Amended effective April 2, 1993 (Supp. 93-2). Section repealed by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1).

R2-7-105. Repealed

Historical Note

Adopted effective April 2, 1993 (Supp. 93-2). Section repealed by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1).

ARTICLE 2. PROCUREMENT ORGANIZATION

R2-7-201. State Procurement Administrator: Duties and Qualifications

- A.** The director shall hire a state procurement administrator with executive and organizational skills and relevant, recent experience in public procurement.
- B.** The state procurement administrator shall:
1. Administer the procurement of materials, services, and construction needed by the state;
 2. Establish procurement policy and procedure;
 3. Establish procurement training standards;
 4. Designate if an Arizona state contract is mandatory;
 5. Delegate procurement authority under R2-7-202; and
 6. Monitor compliance of state governmental units with state procurement laws.
- C.** The state procurement administrator shall maintain a record of each contract awarded under A.R.S. §§ 41-2536 (sole source procurement) and 41-2537 (emergency procurement) that exceeds the amount prescribed in A.R.S. § 41-2535(A). The record shall be maintained for a minimum of five years. The state procurement administrator shall ensure that the record is available for public inspection and contains all of the following:
1. Each contractor's name;
 2. The estimated amount of each contract; and
 3. A description of the item or service procured.

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Amended effective April 2, 1993 (Supp. 93-2). Section repealed; new Section made by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1).

R2-7-202. Delegation of Procurement Authority to State Governmental Units

- A.** The state procurement administrator shall delegate procurement authority to a state governmental unit based upon the following criteria:
1. The procurement expertise, knowledge, experience, and performance of the state governmental unit's agency chief procurement officer, as identified by the state governmental unit; and
 2. The impact of the delegation on procurement efficiency and effectiveness.

- B.** The state procurement administrator shall delegate procurement authority in a written document that specifies all of the following:
1. The agency chief procurement officer,
 2. The specific authority delegated,
 3. Any limits or restrictions upon the delegated authority,
 4. Whether the authority may be further delegated, and
 5. The duration of the delegation.
- C.** The head of a purchasing agency shall immediately report any significant change regarding the criteria considered under subsection (A) to the state procurement administrator.
- D.** A purchasing agency shall exercise delegated authority according to A.R.S. Title 41, Chapter 23 and A.A.C. Title 2, Chapter 7.
- E.** An agency chief procurement officer shall submit to the state procurement administrator any procurement that exceeds the agency's delegated authority.
- F.** The state procurement administrator may revoke, suspend, or modify delegated authority for failure to comply with A.R.S. Title 41, Chapter 23 or A.A.C. Title 2, Chapter 7, or a significant change regarding the criteria considered under subsection (A).
- G.** The state procurement administrator retains all authorities and duties delegated to an agency chief procurement officer at a state governmental unit.

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Amended effective April 2, 1993 (Supp. 93-2). Section repealed; new Section made by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1).

R2-7-203. Agency Chief Procurement Officer

- A.** An agency chief procurement officer may further delegate procurement authority within the purchasing agency, within the limits specified by the state procurement administrator.
- B.** The agency chief procurement officer shall notify the state procurement administrator in writing of employees who have delegated procurement authority.

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Amended effective April 2, 1993 (Supp. 93-2). Section repealed; new Section made by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1).

R2-7-204. State Employee or Public Officer Use of State Contracts

State employees and public officers shall not purchase materials or services for their own personal or business use from contracts entered into by the state unless authorized in writing by the director. The determination shall state how the purchase will further the interests of the state.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1).

R2-7-205. Expired

Historical Note

New Section made by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1). Section expired

under A.R.S. § 41-1056(J) at 23 A.A.R. 1757, effective May 9, 2017 (Supp. 17-2).

R2-7-206. Authorized Procurement Officers

A procurement officer shall perform all procurement duties in accordance with the Arizona Procurement Code and within the authority delegated to the procurement officer in accordance with this Chapter.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1).

R2-7-207. Resolution of Intra-agency Procurement Disputes

Procurement disputes between a purchasing agency and its agency chief procurement officer shall be resolved by the state procurement administrator.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1).

R2-7-208. Expired

Historical Note

New Section made by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 1757, effective May 9, 2017 (Supp. 17-2).

R2-7-209. Prospective Suppliers List

- A. The state procurement administrator shall compile and maintain a prospective suppliers list. To be included on the prospective suppliers list, a person shall register with the state procurement office.
- B. The state procurement administrator may remove suppliers from the prospective suppliers list if a notice sent to the supplier is returned. The state procurement administrator shall maintain a record of the date and reason for removal of a supplier from the prospective suppliers list.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1).

ARTICLE 3. SOURCE SELECTION AND CONTRACT FORMATION

R2-7-301. Repealed

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Amended effective April 2, 1993 (Supp. 93-2). Amended effective July 6, 1994 (Supp. 94-3). Section repealed by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1).

R2-7-302. Repealed

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Amended effective April 2, 1993 (Supp. 93-2). Section repealed by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1).

R2-7-303. Repealed

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Amended effective April 2, 1993 (Supp. 93-2). Section repealed by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1).

R2-7-304. Repealed

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Amended effective April 2, 1993 (Supp. 93-2). Section repealed by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1).

R2-7-305. Repealed

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Section repealed by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1).

R2-7-306. Repealed

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Amended effective April 2, 1993 (Supp. 93-2). Section repealed by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1).

R2-7-307. Repealed

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Section repealed by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1).

R2-7-308. Repealed

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Amended effective April 2, 1993 (Supp. 93-2). Section repealed by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1).

R2-7-309. Repealed

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Amended effective April 2, 1993 (Supp. 93-2). Section repealed by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1).

(Supp. 94-3). Section repealed by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1).

R2-7-337. Repealed**Historical Note**

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Amended effective April 2, 1993 (Supp. 93-2). Section repealed by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1).

R2-7-338. Repealed**Historical Note**

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Amended effective April 2, 1993 (Supp. 93-2). Section repealed by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1).

R2-7-339. Repealed**Historical Note**

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Amended effective April 2, 1993 (Supp. 93-2). Section repealed by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1).

R2-7-340. Repealed**Historical Note**

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Amended effective April 2, 1993 (Supp. 93-2). Section repealed by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1).

R2-7-341. Repealed**Historical Note**

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-1). Amended effective April 2, 1993 (Supp. 93-2). Section repealed by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1).

R2-7-342. Repealed**Historical Note**

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-1). Amended effective April 2, 1993 (Supp. 93-2). Section repealed by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1).

R2-7-343. Repealed

The Request for Proposals shall be in accordance with R2-7-326. The Requests for Proposals shall also be distributed to persons who

have submitted statements of qualifications under R2-7-342 for the particular services sought.

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-1). Section repealed by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1).

R2-7-344. Repealed**Historical Note**

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-1). Amended effective April 2, 1993 (Supp. 93-2). Section repealed by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1).

R2-7-345. Repealed**Historical Note**

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-1). Section repealed by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1).

R2-7-346. Repealed**Historical Note**

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-1). Amended effective April 2, 1993 (Supp. 93-2). Section repealed by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1).

R2-7-347. Repealed**Historical Note**

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-1). Amended effective April 2, 1993 (Supp. 93-2). Section repealed by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1).

R2-7-348. Repealed**Historical Note**

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-1). Amended effective April 2, 1993 (Supp. 93-2). Section repealed by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1).

R2-7-349. Repealed**Historical Note**

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-1). Section repealed by final

84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-1). Section repealed by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1).

R2-7-364. Repealed

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-1). Amended effective April 2, 1993 (Supp. 93-2). Section repealed by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1).

R2-7-365. Repealed

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-1). Amended effective April 2, 1993 (Supp. 93-2). Section repealed by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1).

R2-7-366. Repealed

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-1). Amended effective April 2, 1993 (Supp. 93-2). Section repealed by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1).

R2-7-367. Repealed

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-1). Section repealed by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1).

R2-7-368. Repealed

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-1). Section repealed by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1).

R2-7-369. Repealed

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-1). Section repealed by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1).

R2-7-370. Repealed

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp.

84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-1). Amended effective April 2, 1993 (Supp. 93-2). Section repealed by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1).

PART A. GENERAL PROVISIONS

R2-7-A301. Source Selection Method: Determination Factors

- A.** A state governmental unit shall use any existing Arizona state contract designated as mandatory to satisfy requirements for those materials and services covered by such contracts.
- B.** If a state governmental unit believes that an Arizona state contract, designated as mandatory, does not satisfy its requirements, the state governmental unit may only procure the material or service from another source with the written approval of the state procurement administrator and in conformance with the applicable source selection method.
- C.** The agency chief procurement officer shall determine the applicable source selection method for a procurement, estimating the aggregate dollar amount of the contract and ensuring that the procurement is not artificially divided, fragmented, or combined to circumvent the Arizona Procurement Code.
- D.** The agency chief procurement officer shall not award a contract or incur an obligation on behalf of the state unless sufficient funds are available for the procurement, consistent with A.R.S. § 35-154. If it is reasonable to believe that sufficient funds will become available for a procurement, the agency chief procurement officer may issue a notice with the solicitation indicating that funds are not currently available and that any contract awarded will be conditioned upon the availability of funds.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1).

PART B. COMPETITIVE SEALED BIDDING

R2-7-B301. Solicitation

- A.** An agency chief procurement officer shall issue an invitation for bids at least 14 days before the offer due date and time, unless the agency chief procurement officer determines a shorter time is necessary for a particular procurement. If a shorter time is necessary, the agency chief procurement officer shall document the specific reasons in the procurement file.
- B.** An agency chief procurement officer shall:
 1. Advertise the procurement in accordance with A.R.S. § 41-2533(C); and
 2. At a minimum, provide written notice to the prospective suppliers that have registered with the state procurement office for the specific material, service, or construction solicited.
- C.** An agency chief procurement officer shall include the following in the solicitation:
 1. Instruction to offerors, including:
 - a. Instructions and information to offerors concerning the offer submission requirements, offer due date and time, the location where offers or other documents will be received, and the offer acceptance period;
 - b. The deadline date for requesting a substitution or exception to the solicitation;
 - c. The manner by which the offeror is required to acknowledge amendments;
 - d. The minimum required information in the offer;
 - e. The specific requirements for designating trade secrets and other proprietary information as confidential;

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- f. Any specific responsibility criteria;
 - g. Whether the offeror is required to submit samples, descriptive literature, or technical data with the offer;
 - h. Any evaluation criteria;
 - i. A statement of where documents incorporated by reference are available for inspection and copying;
 - j. A statement that the agency may cancel the solicitation or reject an offer in whole or in part;
 - k. Certification by the offeror that submission of the offer did not involve collusion or other anticompetitive practices;
 - l. Certification by the offeror of compliance with A.R.S. § 41-3532 when offering electronics or information technology products, services, or maintenance;
 - m. That the offeror is required to declare whether the offeror has been debarred, suspended, or otherwise lawfully prohibited from participating in any public procurement activity, including, but not limited to, being disapproved as a subcontractor of any public procurement unit or other governmental body;
 - n. Any bid security required;
 - o. The means required for submission of an offer. The solicitation shall specifically indicate whether hand delivery, U.S. mail, electronic mail, facsimile, or other means are acceptable methods of submission;
 - p. Any designation of the specific bid items and amounts to be recorded at offer opening; and
 - q. Any other offer submission requirements;
 - 2. Specifications, including:
 - a. Any purchase description, specifications, delivery or performance schedule, and inspection and acceptance requirements;
 - b. If a brand name or equivalent specification is used, instructions that the use of a brand name is for the purpose of describing the standard of quality, performance, and characteristics desired and is not intended to limit or restrict competition. The solicitation shall state that products substantially equivalent to the brands designated qualify for consideration; and
 - c. Any other specification requirements;
 - 3. Terms and Conditions, including:
 - a. Whether the contract will include an option for extension; and
 - b. Any other contract terms and conditions.
- A. An agency chief procurement officer shall issue a solicitation amendment to do any or all of the following:
 1. Make changes in the solicitation;
 2. Correct defects or ambiguities;
 3. Provide additional information or instructions; or
 4. Extend the offer due date and time if the agency chief procurement officer determines that an extension is in the best interest of the state.
 - B. If a solicitation is changed by a solicitation amendment, the agency chief procurement officer shall notify suppliers to whom the agency chief procurement officer distributed the solicitation.
 - C. It is the responsibility of the offeror to obtain any solicitation amendments. An offeror shall acknowledge receipt of an amendment in the manner specified in the solicitation or solicitation amendment on or before the offer due date and time.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1).

R2-7-B304. Modification or Withdrawal of Offer Before Offer Due Date and Time

- A. An offeror may modify or withdraw its offer, in writing, before the offer due date and time.
- B. The agency chief procurement officer shall place the document submitted by the offeror in the procurement file as a record of the modification or withdrawal.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1).

R2-7-B305. Cancellation of a Solicitation Before Offer Due Date and Time

- A. Based on the best interest of the state, an agency chief procurement officer may cancel a solicitation before the offer due date and time.
- B. The agency chief procurement officer shall notify suppliers to whom the agency chief procurement officer distributed the solicitation.
- C. The agency chief procurement officer shall not open offers after cancellation. The agency chief procurement officer may discard the offer after 30 days from notice of solicitation cancellation, unless the offeror requests the offer be returned.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1).

R2-7-B306. Receipt, Opening, and Recording of Offers

- A. An agency chief procurement officer shall maintain a record of offers received for each solicitation and shall record the time and date when an offer is received. The agency chief procurement officer shall store each unopened offer in a secure place until the offer due date and time.
- B. A purchasing agency may open an offer to identify the offeror. If this occurs, the agency chief procurement officer shall record the reason for opening the offer, the date and time the offer was opened, and the solicitation number. The agency chief procurement officer shall secure the offer and retain it for public opening.
- C. The agency chief procurement officer shall open offers after the offer due date and time. The agency chief procurement officer shall record the name of each offeror, the amount of each offer, and any other relevant information as determined by the agency chief procurement officer. The agency chief procurement officer shall make the record of offers available for public viewing.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1). Amended by final rulemaking at 20 A.A.R. 3510, effective February 2, 2015 (Supp. 14-4).

R2-7-B302. Pre-offer Conferences

An agency chief procurement officer may conduct one or more pre-offer conferences. If a pre-offer conference is conducted, it shall be a reasonably sufficient time prior to the offer due date and time. Statements made during a pre-offer conference are not amendments to the solicitation.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1). Amended by final rulemaking at 20 A.A.R. 3510, effective February 2, 2015 (Supp. 14-4).

R2-7-B303. Solicitation Amendment

- D. Except for the information identified in subsection (C), the agency chief procurement officer shall ensure that information contained in the offer remains confidential until contract award and is shown only to those persons assisting in the evaluation process.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1). Amended by final rulemaking at 20 A.A.R. 3510, effective February 2, 2015 (Supp. 14-4).

R2-7-B307. Late Offers, Modifications, Withdrawals

- A. If an offer, modification, or withdrawal is received after the due date and time, at the location designated in the solicitation, an agency chief procurement officer shall determine the offer, modification, or withdrawal as late.
- B. The agency chief procurement officer shall reject a late offer, modification, or withdrawal unless:
1. The document is received before the contract award at the location designated in the solicitation; and
 2. The document would have been received by the offer due date and time, but for the action or inaction of personnel directly serving the purchasing agency.
- C. Upon receiving a late offer, modification, or withdrawal, the agency chief procurement officer shall:
1. If the document is hand delivered, refuse to accept delivery; or
 2. If the document is not hand delivered, record the time and date of receipt and promptly send written notice of late receipt to the offeror. The agency chief procurement officer may discard the document within 30 days after the date on the notice unless the offeror requests the document be returned.
- D. The agency chief procurement officer shall document a refusal under subsection (C)(1) and place the document or a copy of the notice required in subsection (C)(2) in the procurement file.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1).

R2-7-B308. Cancellation of Solicitation After Receipt of Offers and Before Award

- A. Based on the best interest of the state, an agency chief procurement officer may cancel a solicitation after offer due date and time. The agency chief procurement officer shall prepare a written justification for cancellation and place it in the procurement file.
- B. The agency chief procurement officer shall notify offerors of the cancellation in writing.
- C. The agency chief procurement officer shall retain offers received under the canceled solicitation in the procurement file. If the purchasing agency intends to issue another solicitation within six months after cancellation of the procurement, the agency chief procurement officer shall withhold the offers from public inspection. After award of a contract under the subsequent solicitation, the agency chief procurement officer shall make offers submitted in response to the canceled solicitation available for public inspection except for information determined to be confidential pursuant to R2-7-103.
- D. In the event of cancellation, the agency chief procurement officer shall promptly return any bid security provided by an offeror.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 508,

effective April 8, 2006 (Supp. 06-1).

R2-7-B309. One Offer Received

If only one offer is received in response to a solicitation, the agency chief procurement officer shall review the offer and either:

1. Award the contract to the offeror and prepare a written determination that:
 - a. The price submitted is fair and reasonable under R2-7-702,
 - b. The offer is responsive, and
 - c. The offeror is responsible, or
2. Reject the offer and:
 - a. Resolicit for new offers,
 - b. Cancel the procurement, or
 - c. Use a different source selection method authorized under the Arizona Procurement Code.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1). Amended by final rulemaking at 18 A.A.R. 3118, effective January 7, 2013 (Supp. 12-4).

R2-7-B310. Offer Mistakes Discovered After Offer Opening and Before Award

- A. If an apparent mistake in an offer, relevant to the award determination, is discovered after opening and before award, an agency chief procurement officer shall contact the offeror for written confirmation of the offer. The agency chief procurement officer shall designate a time-frame within which the offeror shall either:
1. Confirm that no mistake was made and assert that the offer stands as submitted; or
 2. Acknowledge that a mistake was made, and include all of the following in a written response:
 - a. Explanation of the mistake and any other relevant information;
 - b. A request for correction including the corrected offer or a request for withdrawal; and
 - c. The reasons why correction or withdrawal is consistent with fair competition and in the best interest of the state.
- B. An offeror who discovers a mistake in its offer may request correction or withdrawal in writing and shall include all of the following in the written request:
1. Explanation of the mistake and any other relevant information;
 2. A request for correction including the corrected offer or a request for withdrawal; and
 3. The reasons why correction or withdrawal is consistent with fair competition and in the best interest of the state.
- C. An agency chief procurement officer may permit an offeror to correct a mistake if the mistake and the intended offer are evident in the uncorrected offer; for example, an error in the extension of unit prices. The agency chief procurement officer shall not permit a correction that is prejudicial to the state or fair competition.
- D. An agency chief procurement officer shall permit an offeror to furnish information called for in the solicitation but not supplied if the intended offer is evident and submittal of the information is not prejudicial to other offerors.
- E. An agency chief procurement officer shall make a written determination of whether correction or withdrawal is permitted, based on whether the action is consistent with fair competition and in the best interest of the state.
- F. If the offeror fails to act under subsection (A) the offeror is considered nonresponsive and the agency chief procurement

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officer shall place a written determination that the offeror is nonresponsive in the procurement file.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1).

R2-7-B311. Extension of Offer Acceptance Period

- A. To extend the offer acceptance period, an agency chief procurement officer shall notify all offerors in writing of an extension and request written concurrence from each offeror.
- B. To be eligible for a contract award, an offeror shall submit a written concurrence to the extension. The agency chief procurement officer shall reject an offer as nonresponsive if written concurrence is not provided as requested.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1).

R2-7-B312. Bid Evaluation

- A. An agency chief procurement officer shall evaluate offers to determine which offer provides the lowest cost to the state in accordance with any objectively measurable factors set forth in the solicitation.
- B. An agency chief procurement officer shall consider total life cycle costs including residual value when evaluating offers for the procurement of materials or services identified in A.R.S. § 41-2554.
- C. An agency chief procurement officer shall conduct an evaluation to determine whether an offeror is responsive, based upon the requirements set forth in the solicitation. The agency chief procurement officer shall reject as nonresponsive any offer that does not meet the solicitation requirements.
- D. If there are two or more low, responsive offers from responsible offerors that are identical in price, the agency chief procurement officer shall make the award by drawing lots. If time permits, the agency chief procurement officer shall provide the offerors involved an opportunity to attend the drawing. The agency chief procurement officer shall ensure that the drawing is witnessed by at least one person other than the agency chief procurement officer.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1). Amended by final rulemaking at 20 A.A.R. 3510, effective February 2, 2015 (Supp. 14-4).

R2-7-B313. Responsibility Determinations

- A. The agency chief procurement officer shall determine before an award whether an offeror is responsible or nonresponsible.
- B. The agency chief procurement officer shall consider the following factors before determining that an offeror is responsible or nonresponsible:
 1. The offeror's financial, business, personnel, or other resources, such as subcontractors;
 2. The offeror's record of performance and integrity;
 3. Whether the offeror has been debarred or suspended;
 4. Whether the offeror is legally qualified to contract with the state;
 5. Whether the offeror promptly supplied all requested information concerning its responsibility; and
 6. Whether the offeror meets the responsibility criteria specified in the solicitation.
- C. If the agency chief procurement officer determines an offeror is nonresponsible, the agency chief procurement officer shall promptly send a determination to the offeror stating the basis

for the determination. The agency chief procurement officer shall file a copy of the determination in the procurement file.

- D. The agency chief procurement officer shall only disclose responsibility information furnished by an offeror in accordance with A.R.S. § 41-2540.
- E. For the offeror awarded a contract, the agency chief procurement officer's signature on the contract constitutes a determination that the offeror is responsible.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1).

R2-7-B314. Contract Award

- A. An agency chief procurement officer shall award the contract to the lowest responsible and responsive offeror whose offer conforms in all material respects to the requirements and criteria set forth in the solicitation. Unless otherwise provided in the solicitation, an award may be made for an individual line item, any group of line items, or all line items.
- B. The agency chief procurement officer shall keep a record showing the basis for determining the successful offeror or offerors in the procurement file.
- C. The agency chief procurement officer shall notify all offerors of an award.
- D. After a contract is awarded, the agency chief procurement officer shall return any bid security provided by the offeror.
- E. Within 3 days after a contract is awarded, the agency chief procurement officer shall make the procurement file, including all offers, available for public inspection, redacting information that is confidential under R2-7-103.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1). Amended by final rulemaking at 20 A.A.R. 3510, effective February 2, 2015 (Supp. 14-4).

R2-7-B315. Mistakes Discovered After Award

- A. If a mistake in the offer is discovered after the award, the offeror may request withdrawal or correction in writing and shall include all of the following in the written request:
 1. Explanation of the mistake and any other relevant information;
 2. A request for correction including the corrected offer or a request for withdrawal; and
 3. The reasons why correction or withdrawal is consistent with fair competition and in the best interest of the state.
- B. Based on the considerations of fair competition and the best interest of the state, the agency chief procurement officer may:
 1. Allow correction of the mistake, if the resulting dollar amount of the correction is less than the next lowest offer;
 2. Cancel all or part of the award; or
 3. Deny correction or withdrawal.
- C. After cancellation of all or part of an award, the agency chief procurement officer may award all or part of the contract to the next lowest responsible and responsive offeror, within 120 days from the date of award, based on the considerations of fair competition and the best interest of the state.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1). Amended by final rulemaking at 20 A.A.R. 3510, effective February 2, 2015 (Supp. 14-4).

R2-7-B316. Multistep Sealed Bidding

- A. Multi-step sealed bidding is initiated by the issuance of an invitation to submit technical offers. An agency chief procure-

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ment officer shall issue an invitation to submit technical offers that contains all of the following information:

1. Notice that the procurement is conducted in two phases. In phase one unpriced technical offers are considered and selected. In phase two there is competitive bidding by offerors whose offers were selected in phase one;
 2. The best description of the material or service solicited;
 3. The requirements for each technical offer, such as drawings and descriptive literature;
 4. The criteria for evaluating each technical offer;
 5. The closing date and time for receipt of technical offers and the location where offers should be delivered or mailed; and
 6. A statement that negotiations may be held regarding the unpriced technical offer.
- B.** An agency chief procurement officer may conduct a pre-offer conference within a reasonably sufficient time before offer due date and time to discuss the procurement requirements and solicit comments from prospective offerors. Amendments to the solicitation may be issued, if necessary, in accordance with R2-7-B303.
- C.** An agency chief procurement officer may amend an invitation to submit technical offers before or after submission of unpriced technical offers. The agency chief procurement officer shall notify all suppliers who received the solicitation of the amendment and specify a revised offer due date and time. These suppliers may submit new offers or revise existing offers. It is the responsibility of the offeror to obtain any solicitation amendments. An offeror shall acknowledge receipt of an amendment in the manner specified in the solicitation or solicitation amendment on or before the offer due date and time.
- D.** Unpriced technical offers shall not be opened publicly but shall be opened in the presence of two or more procurement officials. Late technical offers are not considered except under the circumstances set forth in R2-7-B307(B). The agency chief procurement officer shall not disclose the contents of an unpriced technical offer to unauthorized persons.
- E.** Each unpriced technical offer shall be evaluated in accordance with the criteria in the invitation to submit technical offers to determine whether the offer is acceptable, potentially acceptable, or unacceptable. If the offer is unacceptable, the agency chief procurement officer shall issue a written determination that the offer is unacceptable, state the basis for the determination, and place the determination in the procurement file. If the agency chief procurement officer determines that an offeror's unpriced technical offer is unacceptable, the agency chief procurement officer shall notify that offeror in writing of the determination and indicate in the notice that the offeror is not afforded an opportunity to amend a technical offer.
- F.** An agency chief procurement officer may conduct negotiations with any offeror that submits an acceptable or potentially acceptable technical offer. During negotiations, the agency chief procurement officer shall not disclose any information obtained from an unpriced technical offer to any other offeror. After negotiations, the agency chief procurement officer shall establish a closing date for receipt of final technical offers and provide written notice of the closing date to offerors that submitted acceptable or potentially acceptable offers. The agency chief procurement officer shall maintain a record of all negotiations.
- G.** After receipt of final technical offers, an agency chief procurement officer shall determine which technical offers are acceptable for consideration in phase two. The agency chief procurement officer shall notify in writing each offeror whose technical offer was determined unacceptable.
- H.** At any time during phase one, an offeror may withdraw an offer.
- I.** Upon completion of phase one, an agency chief procurement officer shall issue a solicitation and conduct phase two as prescribed under R2-7-B301 through R2-7-B315 as a competitive sealed bidding procurement, except that the solicitation shall be issued only to offerors that submitted acceptable technical offers in phase one.
- J.** An agency chief procurement officer shall ensure that unpriced technical offers of unsuccessful offerors are available for public inspection except to the extent that the offer is confidential under R2-7-B306.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1). Amended by final rulemaking at 20 A.A.R. 3510, effective February 2, 2015 (Supp. 14-4).

PART C. COMPETITIVE SEALED PROPOSALS**R2-7-C301. Solicitation**

- A.** An agency chief procurement officer shall issue a request for proposal at least 14 days before the offer due date and time, unless the agency chief procurement officer determines a shorter time is necessary for a particular procurement. If a shorter time is necessary, the agency chief procurement officer shall document the specific reasons in the procurement file.
- B.** The agency chief procurement officer shall:
1. Advertise in accordance with A.R.S. § 41-2534(C); and
 2. At a minimum, provide written notice to prospective suppliers that have registered with the state procurement office for the specific material, service, or construction solicited.
- C.** The agency chief procurement officer shall include the following in the solicitation:
1. Instructions to offerors, including:
 - a. Instructions and information to offerors concerning the offer submission requirements, offer due date and time, the location where offers will be received, and the offer acceptance period;
 - b. The deadline date for requesting a substitution or exception to the solicitation;
 - c. The manner by which the offeror is required to acknowledge amendments;
 - d. The minimum information required in the offer;
 - e. The specific requirements for designating trade secrets and other proprietary information as confidential;
 - f. Any specific responsibility or susceptibility criteria;
 - g. Whether the offeror is required to submit samples, descriptive literature, and technical data with the offer;
 - h. Evaluation factors and the relative order of importance;
 - i. A statement of where documents incorporated by reference are available for inspection and copying;
 - j. A statement that the agency may cancel the solicitation or reject an offer in whole or in part;
 - k. Certification by the offeror that submission of the offer did not include collusion or other anticompetitive practices;
 - l. Certification by the offeror of compliance with A.R.S. § 41-3532 when offering electronics or information technology products, services, or maintenance;
 - m. That the offeror is required to declare whether the offeror has been debarred, suspended, or otherwise

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lawfully prohibited from participating in any public procurement activity, including, but not limited to, being disapproved as a subcontractor of any public procurement unit or other governmental body;

- n. Any offer security required;
 - o. The means required for submission of offer. The solicitation shall specifically indicate whether hand delivery, U.S. mail, electronic mail, facsimile, or other means are acceptable methods of submission;
 - p. Any cost or pricing data required;
 - q. The type of contract to be used;
 - r. A statement that negotiations may be conducted with offerors reasonably susceptible of being selected for award; and
 - s. Any other offer requirements specific to the solicitation.
2. Specifications, including:
- a. Any purchase description, specifications, delivery or performance schedule, and inspection and acceptance requirements;
 - b. If a brand name or equivalent specification is used, instructions that the use of a brand name is for the purpose of describing the standard of quality, performance, and characteristics desired and is not intended to limit or restrict competition. The solicitation shall state that products substantially equivalent to those brands designated shall qualify for consideration; and
 - c. Any other specification requirements specific to the solicitation.
3. Terms and Conditions, including:
- a. Whether the contract is to include an extension option; and
 - b. Any other contract terms and conditions.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1). Amended by final rulemaking at 20 A.A.R. 3510, effective February 2, 2015 (Supp. 14-4).

R2-7-C302. Pre-offer Conferences

An agency chief procurement officer may conduct one or more pre-offer conferences within a reasonable time before offer due date and time to discuss the procurement requirements and solicit comments from prospective offerors. Amendments to the solicitation may be issued, if necessary, in accordance with R2-7-B303.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1). Amended by final rulemaking at 20 A.A.R. 3510, effective February 2, 2015 (Supp. 14-4).

R2-7-C303. Solicitation Amendment

- A. An agency chief procurement officer shall issue a solicitation amendment to do any or all of the following:
 - 1. Make changes in the solicitation;
 - 2. Correct defects or ambiguities;
 - 3. Provide additional information or instructions; or
 - 4. Extend the offer due date and time if the agency chief procurement officer determines that an extension is in the best interest of the state.
- B. If a solicitation is changed by a written solicitation amendment, the agency chief procurement officer shall notify suppliers to whom the agency chief procurement officer distributed the solicitation.

- C. It is the responsibility of the offeror to obtain any solicitation amendments. An offeror shall acknowledge receipt of an amendment in a manner specified in the solicitation amendment on or before the offer due date and time.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1).

R2-7-C304. Modification or Withdrawal of Offer Before Offer Due Date and Time

- A. An offeror may modify or withdraw their offer at any time, in writing, before the offer due date and time.
- B. The agency chief procurement officer shall place the document submitted in the procurement file as a record of the modification or withdrawal.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1).

R2-7-C305. Cancellation of Solicitation Before Offer Due Date and Time

- A. Based on the best interest of the state, an agency chief procurement officer may cancel a solicitation before the offer due date and time.
- B. The agency chief procurement officer shall notify suppliers to whom the agency chief procurement officer distributed the solicitation.
- C. The agency chief procurement officer shall not open offers after cancellation. The agency chief procurement officer may discard the offer after 30 days from notice of solicitation cancellation unless the offeror requests the offer be returned.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1).

R2-7-C306. Receipt, Opening, and Recording of Offers

- A. An agency chief procurement officer shall maintain a record of offers received for each solicitation and shall record the time and date when an offer is received. The agency chief procurement officer shall store each unopened offer in a secure place until the offer due date and time.
- B. A purchasing agency may open an offer to identify the offeror. If this occurs, the agency chief procurement officer shall record the reason for opening the offer, the date and time the offer was opened, and the solicitation number. The agency chief procurement officer shall secure the offer and retain it for public opening.
- C. The agency chief procurement officer shall open offers after the offer due date and time. The agency chief procurement officer shall record the name of each offeror and any other relevant information as determined by the agency chief procurement officer. The agency chief procurement officer shall make the record of offers available for public viewing.
- D. Except for the information identified in subsection (C), the agency chief procurement officer shall ensure that information contained in the offer remains confidential until contract award and is shown only to those persons assisting in the evaluation process.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1). Amended by final rulemaking at 20 A.A.R. 3510, effective February 2, 2015 (Supp. 14-4).

R2-7-C307. Late Offers, Modifications, and Withdrawals Before Offer Due Date and Time

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- A. If an offer, modification, or withdrawal is not received by the offer due date and time, at the location designated in the solicitation, an agency chief procurement officer shall determine the offer, modification, or withdrawal as late. This rule does not apply to revision or withdrawal of offers as described in R2-7-C314.
- B. The agency chief procurement officer shall reject a late offer, modification, or withdrawal unless:
1. The document is received before contract award at the location designated in the solicitation; and
 2. The document would have been received by the offer due date and time, but for the action or inaction of personnel directly serving the purchasing agency.
- C. Upon receiving a late offer, modification, or withdrawal, the agency chief procurement officer shall:
1. If the document is hand delivered, refuse to accept the delivery; or
 2. If the document is not hand delivered, record the time and date of receipt and promptly send written notice of late receipt to the offeror. The agency chief procurement officer may discard the document within 30 days after the date on the notice unless the offeror requests the document be returned.
- D. The agency chief procurement officer shall document a refusal under (C)(1) and place the document or a copy of the notice required in (C)(2) in the procurement file.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1).

R2-7-C308. Cancellation of Solicitation After Offer Opening and Before Award

- A. Based on the best interest of the state, an agency chief procurement officer may cancel a solicitation after offer due date and time. The agency chief procurement officer shall prepare a written justification for cancellation and place it in the procurement file.
- B. The agency chief procurement officer shall notify offerors of the cancellation in writing.
- C. The agency chief procurement officer shall retain offers received under the canceled solicitation in the procurement file. If the purchasing agency intends to issue another solicitation within six months after cancellation of the procurement, the agency chief procurement officer may withhold the offers from public inspection. After award of a contract under the subsequent solicitation, the agency chief procurement officer shall make offers submitted in response to the cancelled solicitation open for public inspection except for information determined to be confidential pursuant to R2-7-103.
- D. In the event of cancellation, the agency chief procurement officer shall promptly return any offer security provided by an offeror.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1).

R2-7-C309. Only One Offer Received

- If only one offer is received in response to a solicitation, the agency chief procurement officer shall review the offer and either:
1. Award the contract to the offeror and prepare a written determination that:
 - a. The price submitted is fair and reasonable pursuant to R2-7-702; and
 - b. The offeror is responsive; and
 - c. The offeror is responsible; or
 2. Reject the offer and:
 - a. Resolicit for new offers;
 - b. Cancel the procurement; or
 - c. Use a different source selection method authorized under the Arizona Procurement Code.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1). Amended by final rulemaking at 18 A.A.R. 3118, effective January 7, 2013 (Supp. 12-4).

R2-7-C310. Extension of Offer Acceptance Period

- A. To extend the offer acceptance period, an agency chief procurement officer shall notify offerors in writing of an extension and request written concurrence from all offerors.
- B. To be eligible for a contract award, an offeror shall submit written concurrence to the extension. The agency chief procurement officer shall not consider the offer from an offeror who fails to respond to the notice of extension.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1).

R2-7-C311. Determination of Not Susceptible for Award

- A. An agency chief procurement officer may determine at any time during the evaluation period and before award that an offer is not susceptible for award. The agency chief procurement officer shall place a written determination, based on one or more of the following, in the procurement file:
1. The offer fails to substantially meet one or more of the mandatory requirements of the solicitation;
 2. The offer fails to comply with any susceptibility criteria identified in the solicitation; or
 3. The offer is not susceptible for award in comparison to other offers based on the criteria set forth in the solicitation. When there is doubt as to whether an offer is susceptible for award, the offer should be included for further consideration.
- B. The agency chief procurement officer shall promptly notify the offeror in writing of the final determination that the offer is not susceptible for award, unless the agency chief procurement officer determines notification to the offeror would compromise the state's ability to negotiate with other offerors.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1). Amended by final rulemaking at 18 A.A.R. 3118, effective January 7, 2013 (Supp. 12-4). Amended by final rulemaking at 20 A.A.R. 3510, effective February 2, 2015 (Supp. 14-4).

R2-7-C312. Responsibility Determinations

- A. An agency chief procurement officer shall determine, at any time during the evaluation period and before award, that an offeror is responsible or nonresponsible.
- B. The agency chief procurement officer may consider the following factors before determining that an offeror is responsible or nonresponsible:
1. The offeror's financial, business, personnel, or other resources, including subcontractors;
 2. The offeror's record of performance and integrity;
 3. Whether the offeror has been debarred or suspended;
 4. Whether the offeror is legally qualified to contract with the state;
 5. Whether the offeror promptly supplied all requested information concerning its responsibility; and
 6. Whether the offeror meets any responsibility criteria specified in the solicitation.

- C. The agency chief procurement officer shall promptly notify the offeror in writing of the final determination that the offer is nonresponsible unless the agency chief procurement officer determines notification to the offeror would compromise the state's ability to negotiate with other offerors. The agency chief procurement office shall file a copy of the determination in the procurement file.
- D. The agency chief procurement officer shall only disclose responsibility information furnished by an offeror in accordance with A.R.S. § 41-2540(B).
- E. For the offeror awarded a contract, the agency chief procurement officer's signature on the contract constitutes a determination that the offeror is responsible.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1).

R2-7-C313. Clarification of Offers

- A. The purpose for clarifications is to provide for a greater mutual understanding of the offer. Clarifications are not negotiations and material changes to the request for proposal or offer shall not be made by clarification.
- B. The agency chief procurement officer may request clarifications from offerors at any time after receipt of offers. Clarifications may be requested orally or in writing. If clarifications are requested orally, the offeror shall confirm the request in writing. A request for clarifications shall not be considered a determination that the offeror is susceptible for award.
- C. The agency chief procurement officer shall retain any clarifications in the procurement file.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1).

R2-7-C314. Negotiations with Responsible Offerors and Revisions of Offers

- A. An agency chief procurement officer shall establish procedures and schedules for conducting negotiations. The agency chief procurement officer shall ensure there is no disclosure of one offeror's price or any information derived from competing offers to another offeror.
- B. Negotiations may be conducted orally or in writing. If oral negotiations are conducted, the agency chief procurement officer shall confirm the negotiations in writing and provide to the offeror.
- C. If negotiations are conducted, negotiations shall be conducted with all offerors determined to be reasonably susceptible for award. Offerors may revise offers based on negotiations provided that any revision is confirmed in writing.
- D. An agency chief procurement officer may conduct negotiations with responsible offerors to improve offers in such areas as cost, price, specifications, performance, or terms, to achieve best value for the state based on the requirements and the evaluation factors set forth in the solicitation.
- E. Responsible offerors determined to be susceptible for award, with which negotiations have been held, may revise their offer in writing during negotiations.
- F. An offeror may withdraw an offer at any time before the best and final offer due date and time by submitting a written request to the agency chief procurement officer.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1). Amended by final rulemaking at 18 A.A.R. 3118, effective January 7, 2013 (Supp. 12-4). Amended by final rulemaking at 20 A.A.R.

3510, effective February 2, 2015 (Supp. 14-4).

R2-7-C315. Offer Revisions and Best and Final Offers

- A. An agency chief procurement officer may request written revisions to an offer. The agency chief procurement officer shall include in the written request:
 1. The date, time, and place for submission of offer revisions; and
 2. A statement that if offerors do not submit a written notice of withdrawal or a written offer revision, their immediate previous written offer will be accepted as their final offer.
- B. An agency chief procurement officer shall request best and final offers from any offeror with whom negotiations have been conducted. The agency chief procurement officer shall include in the written request:
 1. The date, time, and place for submission of best and final offer; and
 2. A statement that if offerors do not submit a written best and final offer, their immediate previous written offer will be accepted as their best and final offer.
- C. The agency chief procurement officer shall request written best and final offers only once, unless the state procurement administrator makes a written determination that it is advantageous to the state to conduct further negotiations or change the state's requirements.
- D. If an apparent mistake, relevant to the award determination, is discovered after opening of best and final offers, the agency chief procurement officer shall contact the offeror for written confirmation. The agency chief procurement officer shall designate a time-frame within which the offeror shall either:
 1. Confirm that no mistake was made and assert that the offer stands as submitted; or
 2. Acknowledge that a mistake was made, and include the following in a written response:
 - a. Explanation of the mistake and any other relevant information,
 - b. A request for correction including the corrected offer or a request for withdrawal, and
 - c. The reasons why correction or withdrawal is consistent with fair competition and in the best interest of the state.
- E. An offeror who discovers a mistake in their best and final offer may request withdrawal or correction in writing, and shall include the following in the written request:
 1. Explanation of the mistake and any other relevant information,
 2. A request for correction including the corrected offer or a request for withdrawal, and
 3. The reasons why correction or withdrawal is consistent with fair competition and in the best interest of the state.
- F. In response to a request made under subsections (C) or (D), the agency chief procurement officer shall make a written determination of whether correction or withdrawal will be allowed based on whether the action is consistent with fair competition and in the best interest of the state. If an offeror does not provide written confirmation of the best and final offer, the agency chief procurement officer shall make a written determination that the most recent written best and final offer submitted is the final best and final offer.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1). Amended by final rulemaking at 18 A.A.R. 3118, effective January 7, 2013 (Supp. 12-4). Amended by final rulemaking at 20 A.A.R. 3510, effective February 2, 2015 (Supp. 14-4).

R2-7-C316. Evaluation of Offers

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- A. An agency chief procurement officer shall evaluate offers and best and final offers based on the evaluation criteria contained in the request for proposals. The agency chief procurement officer shall not modify evaluation criteria or their relative order of importance after offer due date and time.
- B. An agency chief procurement officer may appoint an evaluation committee to assist in the evaluation of offers. If offers are evaluated by an evaluation committee, the evaluation committee shall prepare an evaluation report for the agency chief procurement officer. The evaluation report shall supersede all previous draft evaluations or evaluation reports. The agency chief procurement officer may:
 1. Accept or reject the findings of the evaluation committee,
 2. Request additional information from the evaluation committee, or
 3. Replace the evaluation committee.
- C. The agency chief procurement officer shall prepare an award determination and place the determination, including any evaluation report or other supporting documentation, in the procurement file.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1). Amended by final rulemaking at 18 A.A.R. 3118, effective January 7, 2013 (Supp. 12-4). Amended by final rulemaking at 20 A.A.R. 3510, effective February 2, 2015 (Supp. 14-4).

R2-7-C317. Contract Award

- A. An agency chief procurement officer shall award the contract to the responsible offeror whose offer is determined to be most advantageous to the state based on the evaluation factors set forth in the solicitation. The agency chief procurement officer shall make a written determination explaining the basis for the award and place it in the procurement file.
- B. The agency chief procurement officer shall notify all offerors of an award.
- C. After contract award, the agency chief procurement officer shall return any offer security provided by the offeror.
- D. Within 3 days after contract award the agency chief procurement officer shall make the procurement file, including all offers, available for public inspection, redacting information that is confidential under R2-7-103.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1). Amended by final rulemaking at 20 A.A.R. 3510, effective February 2, 2015 (Supp. 14-4).

R2-7-C318. Mistakes Discovered After Award

- A. If a mistake in the offer is discovered after the award, the offeror may request correction or withdrawal in writing, and shall include all of the following in their written request:
 1. Explanation of the mistake and any other relevant information;
 2. A request for correction including the corrected offer or a request for withdrawal; and
 3. The reasons why correction or withdrawal is consistent with fair competition and in the best interest of the state.
- B. Based on the considerations of fair competition and the best interest of the state, the agency chief procurement officer may:
 1. Allow correction of the mistake;
 2. Cancel all or part of the award; or
 3. Deny correction or withdrawal.
- C. After cancellation of all or part of an award, the agency chief procurement officer may award all or part of the contract to the next responsible offeror, within 120 days of contract award,

whose offer is determined to be the next most advantageous to the state according to the evaluation factors contained in the solicitation.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1). Amended by final rulemaking at 20 A.A.R. 3510, effective February 2, 2015 (Supp. 14-4).

PART D. PROCUREMENTS NOT EXCEEDING THE AMOUNT PRESCRIBED IN A.R.S. § 41-2535**R2-7-D301. Applicability**

For purchases not exceeding the amount prescribed in A.R.S. § 41-2535, including construction, the agency chief procurement officer shall issue a request for quotation under R2-7-D302 unless any of the following apply:

1. The purchase can be made from a state or agency contract;
2. The purchase can be made from a set-aside organization as established in Article 10;
3. The purchase is not expected to exceed \$10,000.00;
4. The agency chief procurement officer makes a written determination that competition is not practicable under the circumstances. The purchase shall be made with as much competition as is practicable under the circumstances.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1). Amended by final rulemaking at 20 A.A.R. 3510, effective February 2, 2015 (Supp. 14-4).

R2-7-D302. Solicitation – Request for Quotation

- A. A request for quotation shall be issued for purchases estimated to exceed \$10,000 but less than that specified in A.R.S. § 41-2535. The agency chief procurement officer shall include the following in the solicitation:
 1. Offer submission requirements, including offer due date and time, where offers will be received, and offer acceptance period;
 2. Any purchase description, specifications, delivery or performance schedule, and inspection and acceptance requirements;
 3. The minimum information that the offer shall contain;
 4. Any evaluation factors;
 5. Whether negotiations may be held;
 6. Any contract options including renewal or extension;
 7. The uniform terms and conditions by text or reference; and
 8. Any other terms, conditions, or instructions specific to the procurement.
- B. The agency chief procurement officer shall issue the request for quotation by distributing the request for quotation to a minimum of three small businesses registered on the prospective suppliers list.
- C. The request for quotation shall include a statement that only a small business, as defined in R2-7-101, shall be awarded a contract, unless any of the following apply:
 1. The purchase has been unsuccessfully competed under Subsection (B) of this Section, including failure to obtain fair and reasonable prices;
 2. The agency chief procurement officer has made a written determination that less than three small businesses are registered on the prospective suppliers list; or

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3. The agency chief procurement officer has made a written determination prior to issuing a request for quotation that restricting the procurement to small business is not practical under the circumstances.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1). Amended by final rulemaking at 20 A.A.R. 3510, effective February 2, 2015 (Supp. 14-4).

R2-7-D303. Contract Award

- A.** If only one responsive offer is received, the agency chief procurement officer shall determine if the price is fair and reasonable, and in the best interest of the state to award a contract and place the determination in the procurement file. If time permits, the agency chief procurement officer may initiate a second request for quotation if it is reasonable to believe that additional responses will be received.
- B.** The agency chief procurement officer shall award a contract to the small business determined to be most advantageous to the state in accordance with any evaluation factors identified in the request for quotation. If award is pursuant to R2-7-D302(C), the agency chief procurement officer shall award a contract to the offeror determined to be most advantageous to the state in accordance with any evaluation factors identified in the request for quotation.
- C.** The agency chief procurement officer shall place the written basis for the award in the procurement file.
- D.** The agency chief procurement officer shall make the procurement file available to the public on the date of contract award, except for those items considered confidential under R2-7-103.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1). Amended by final rulemaking at 18 A.A.R. 3118, effective January 7, 2013 (12-4). Section R2-7-D303 repealed; new Section R2-7-D303 renumbered from R2-7-D304 and amended by final rulemaking at 20 A.A.R. 3510, effective February 2, 2015 (Supp. 14-4).

R2-7-D304. Purchases of \$10,000 and Less

The agency chief procurement officer shall use reasonable judgment in awarding contracts of \$10,000 and less that are advantageous to the state. The agency chief procurement officer may but is not required to request quotations.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1). Section R2-7-D304 renumbered to R2-7-D303; new Section R2-7-D304 renumbered from R2-7-D305 and amended by final rulemaking at 20 A.A.R. 3510, effective February 2, 2015 (Supp. 14-4).

R2-7-D305. Renumbered**Historical Note**

New Section made by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1). Section R2-7-D305 renumbered to R2-7-D304 by final rulemaking at 20 A.A.R. 3510, effective February 2, 2015 (Supp. 14-4).

PART E. LIMITED COMPETITION FOR PROCUREMENTS EXCEEDING THE AMOUNT PRESCRIBED IN A.R.S. § 41-2535

R2-7-E301. Sole Source Procurements

- A.** For the purposes of this Section, the term “sole-source procurement” means a material or service procured without competition when:
1. There is only a single source for the material or service, or
 2. No reasonable alternative source exists.
- B.** This Section applies to only sole source procurements, estimated to exceed the amount prescribed in A.R.S. § 41-2535.
- C.** The state procurement administrator may delegate this authority to the agency chief procurement officer in accordance with R2-7-202. If not delegated to the agency chief procurement officer, the agency chief procurement officer shall submit a written request for approval to procure from a sole source to the state procurement administrator before proceeding. The request shall include the following information:
1. A description of the procurement need and the reason why there is only a single source available or no reasonable alternative exists,
 2. The name of the proposed supplier,
 3. The duration and estimated total dollar value of the proposed procurement,
 4. Documentation that the price submitted is fair and reasonable pursuant to R2-7-702, and
 5. A description of efforts made to seek other sources.
- D.** The state procurement administrator shall send notice to registered vendors on the electronic system to invite comments on the sole-source request for three working days. Following this period, the state procurement administrator shall either:
1. Issue written approval, with any conditions or restrictions;
 2. Request additional information from the agency chief procurement officer; or
 3. Deny the request if input or information received shows that more than one source is available or a reasonable alternative source exists for the procurement need.
- E.** If the sole-source procurement is authorized or approved, the agency chief procurement officer shall negotiate a contract advantageous to the state.
- F.** The agency chief procurement officer shall keep a record of all sole-source procurements pursuant to A.R.S. § 41-2551.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1). Amended by final rulemaking at 18 A.A.R. 3118, effective January 7, 2013 (12-4). Amended by final rulemaking at 20 A.A.R. 3510, effective February 2, 2015 (Supp. 14-4).

R2-7-E302. Emergency Procurements

- A.** For the purposes of Section, the term “emergency” means any condition creating an immediate and serious need for materials, services, or construction in which the state’s best interests are not met through the use of other source-selection methods. The condition must seriously threaten the functioning of state government, the preservation or protection of property, or the health or safety of a person.
- B.** This Section applies to only emergency procurements, estimated to exceed the amount prescribed in A.R.S. § 41-2535. The agency chief procurement officer may procure a material or service without competition when there is an emergency by complying with this Section.
- C.** The state procurement administrator may delegate this authority to the agency chief procurement officer in accordance with R2-7-202. If not delegated to the agency chief procurement officer, the agency chief procurement officer shall submit the written request for, or notification of, the emergency procure-

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ment to the state procurement administrator. The request shall include the following information:

1. A description of the procurement need and the reason for the emergency;
 2. The name of the supplier;
 3. The duration and estimated total dollar value of the procurement; and
 4. Documentation that the price submitted is fair and reasonable pursuant to R2-7-702.
- D.** The agency chief procurement officer shall obtain approval from the state procurement administrator before proceeding with an emergency procurement. The state procurement administrator shall either:
1. Issue written approval, with any conditions or restrictions;
 2. Request additional information from the agency chief procurement officer; or
 3. Deny the request.
- E.** An employee acting within the authority of a using agency may proceed with an emergency procurement without approval from the state procurement administrator if the emergency necessitates immediate response and it is impracticable to contact the state procurement administrator. The agency chief procurement officer shall submit a written confirmation of the emergency procurement to the state procurement administrator within five working days of the emergency.
- F.** A using agency making an emergency procurement shall limit the procurement to such actions necessary to address the emergency.
- G.** A using agency making an emergency procurement shall employ maximum competition, given the circumstances, to protect the interests of the state.
- H.** The agency chief procurement officer shall keep a record of all emergency procurements pursuant to A.R.S. § 41-2551.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1).

R2-7-E303. Competition Impracticable Procurements

- A.** For the purposes of this Section, "competition impracticable" means a procurement requirement exists which makes compliance with A.R.S. §§ 41-2533, 41-2534, 41-2538, or 41-2578 impracticable, unnecessary, or contrary to the public interest, but which is not an emergency under R2-7-E302. Procurements with a documented lack of available vendors in the marketplace and which require an open and continuous availability of offerors may be procured by this method.
- B.** An agency chief procurement officer seeking a competition impracticable procurement shall obtain the approval of the state procurement administrator before proceeding. The state procurement administrator may delegate this authority to the agency chief procurement officer in accordance with R2-7-202.
- C.** The agency chief procurement officer shall submit a written request for approval containing the following:
1. An explanation of the competition impracticable need and the unusual or unique situation that makes compliance with A.R.S. §§ 41-2533, 41-2534, 41-2538, or 41-2578 impracticable, unnecessary, or contrary to the public interest;
 2. A definition of the proposed procurement process to be utilized and an explanation of how this process will foster as much competition as is practicable;
 3. An explanation of why the proposed procurement process is advantageous to the state; and

4. The scope, duration, and estimated total dollar value of the procurement need.

- D.** The state procurement administrator shall:
1. Issue written approval, with any conditions or restrictions;
 2. Request additional information from the agency chief procurement officer; or
 3. Deny the request.
- E.** Before modifying the scope, duration, or cost of an approved competition impracticable procurement, the agency chief procurement officer shall request approval for the modifications in writing from the state procurement administrator.
- F.** The agency chief procurement officer shall keep a record of all competition impracticable procurements as required by A.R.S. § 41-2551.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1). Amended by final rulemaking at 18 A.A.R. 3118, effective January 7, 2013 (12-4).

PART F. COMPETITIVE SELECTION PROCESS FOR SERVICES OF CLERGY, PHYSICIANS, DENTISTS, LEGAL COUNSEL, OR CERTIFIED PUBLIC ACCOUNTANTS**R2-7-F301. Statement of Qualifications**

- A.** The agency chief procurement officer may request that persons desiring to provide the services specified in A.R.S. § 41-2513 submit statements of qualifications on a prescribed form which shall include, but not be limited to the following information:
1. Technical education and training;
 2. General or special experience, certifications, licenses, and memberships in professional associations, societies, or boards; and
 3. Any other relevant information requested by the purchasing agency.
- B.** Persons who have submitted statement of qualifications may submit additional information or change information that was previously submitted at any time.
- C.** The agency chief procurement officer may, in lieu of subsection (A), incorporate the statement of qualifications as part of the solicitation pursuant to R2-7-F302.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1). Amended by final rulemaking at 20 A.A.R. 3510, effective February 2, 2015 (Supp. 14-4).

R2-7-F302. Solicitation

- A.** For procurements not exceeding the amount prescribed in A.R.S. § 41-2535, except as authorized under A.R.S. § 41-2536, the agency chief procurement officer shall comply with Part D of this Article.
- B.** For procurements exceeding the amount prescribed in A.R.S. § 41-2535, the agency chief procurement officer shall follow the procedures below, except as authorized under A.R.S. §§ 41-2536 or 41-2537:
1. The agency chief procurement officer shall issue a request for proposal providing adequate notice based on the circumstances.
 2. The agency chief procurement officer shall provide notice to prospective suppliers registered at the state procurement office for the specific service and, if R2-7-F301 has been implemented, to persons who have submitted statements of qualifications for the particular services solicited, or both.

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3. The agency chief procurement officer shall include the following in the solicitation:
 - a. A specific offer due date and time, or that offers will be accepted on an open and continuous basis. If offers are accepted on an open and continuous basis, the designated, continuous day and time in which offers will be opened;
 - b. The location where offers will be received;
 - c. The offer acceptance period;
 - d. The manner by which the offeror is required to acknowledge amendments;
 - e. A description of the services needed;
 - f. The type of qualifications, experience, licensing, or other information required;
 - g. The minimum information in the offer;
 - h. Any evaluation criteria;
 - i. Any applicable contract terms and conditions;
 - j. A statement that negotiations may be conducted to determine the offeror's qualifications for further consideration;
 - k. Any cost or pricing data required;
 - l. The type of contract to be used;
 - m. A statement that the agency may cancel the solicitation or reject an offer in whole or in part;
 - n. Certification by the offeror that submission of the offer did not involve collusion or other anticompetitive practices; and
 - o. A statement of whether the services shall be retained for a stated or ongoing period of time and whether the contract is to include any option for renewal or extension.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1). Amended by final rulemaking at 20 A.A.R. 3510, effective February 2, 2015 (Supp. 14-4).

R2-7-F303. Solicitation Amendment

- A. The agency chief procurement officer shall issue a solicitation amendment to do any or all of the following:
 1. Make changes in the solicitation;
 2. Correct defects or ambiguities;
 3. Provide additional information or instructions; or
 4. Extend the offer due date and time if the agency chief procurement officer determines that an extension is in the best interest of the state.
- B. If a solicitation is changed by a written solicitation amendment, the agency chief procurement officer shall notify suppliers to whom the agency chief procurement officer distributed the solicitation.
- C. It is the responsibility of the offeror to obtain any solicitation amendments. An offeror shall acknowledge receipt of an amendment in a manner specified in the solicitation amendment on or before the offer due date and time.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1). Amended by final rulemaking at 20 A.A.R. 3510, effective February 2, 2015 (Supp. 14-4).

R2-7-F304. Cancellation of Solicitation

- A. Based on the best interest of the state, the agency chief procurement officer may cancel a solicitation at any time before award.
- B. Based on the best interest of the state, the agency chief procurement officer may cancel an open and continuous solici-

tion at any time during the active period of the solicitation. Contracts that have already been awarded in accordance with the solicitation shall not be affected by the cancellation.

- C. The agency chief procurement officer shall notify offerors of the cancellation in writing.
- D. The agency chief procurement officer shall return any offers received to the offerors.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1). Amended by final rulemaking at 20 A.A.R. 3510, effective February 2, 2015 (Supp. 14-4).

R2-7-F305. Receipt, Opening, and Recording of Offers

- A. The agency chief procurement officer shall maintain a record of offers received for each solicitation and shall record the time and date when an offer is received. The agency chief procurement officer shall store each unopened offer in a secure place until the offer due date and time.
- B. A purchasing agency may open an offer to identify the offeror. If this occurs, the agency chief procurement officer shall record the reason for opening the offer, the date and time the offer was opened, and the solicitation number. The agency chief procurement officer shall secure the offer and retain it for public opening.
- C. The agency chief procurement officer shall open offers after the offer due date and time. The agency chief procurement officer shall announce and record the name of each offeror and any other relevant information as determined by the agency chief procurement officer. The agency chief procurement officer shall make the record of offers available for public viewing.
- D. Except for the information identified in R2-7-C306(C), the agency chief procurement officer shall ensure that information contained in the offer remains confidential until contract award and is shown only to those persons assisting in the evaluation process.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1). Amended by final rulemaking at 20 A.A.R. 3510, effective February 2, 2015 (Supp. 14-4).

R2-7-F306. Timely and Late Modifications or Withdrawals of Offer

- A. An authorized representative of an offeror may withdraw an offer in writing if the written request for withdrawal is received by the agency chief procurement officer before the designated offer due date and time or the designated, continuous offer due date and time.
- B. An offeror may withdraw or modify an offer at any time before the due date and time or designated, continuous day and time for offer opening and before contract award by submitting a written request to the agency chief procurement officer.
- C. If a modification or a withdrawal is not received by the designated offer due date and time or the designated, continuous day and time for offer opening, the agency chief procurement officer shall determine the modification or withdrawal as late. The agency chief procurement officer shall reject a late modification or withdrawal unless:
 1. The document is received before the contract award; and
 2. The document would have been received by the designated offer due date and time or the designated, continuous day and time for offer opening but for the action or inaction of state personnel directly serving the purchasing agency.

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- D. Upon receiving a late modification or withdrawal, the procurement officer shall:
1. If the document is hand delivered, refuse to accept delivery; or
 2. If the document is not hand delivered, record the time and date of receipt, and promptly send written notice of late receipt to the offeror. The agency chief procurement officer may discard the document within 30 days after the date on the notice unless the offeror requests the document be returned.
- E. The agency chief procurement officer shall document a refusal under (D)(1) and place this document or a copy of the notice required in (D)(2) in the procurement file.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1). Amended by final rulemaking at 20 A.A.R. 3510, effective February 2, 2015 (Supp. 14-4).

R2-7-F307. Late Offers

- A. If a specific offer due date and time has been identified in the solicitation, the agency chief procurement officer shall reject any offer received after the specified offer due date and time unless:
1. It was transmitted through an eProcurement system designated in the solicitation, and the offer has a submitted status in the system prior to the offer due date and time; or
 2. There is evidence to establish that the hand-delivered offer was received before contract award at the location designated in the solicitation and would have been received by the offer due date and time but for the failure of state personnel directly serving the purchasing agency.
- B. Upon receiving a late offer, the agency chief procurement officer shall:
1. If the document is hand delivered, refuse to accept the delivery; or
 2. If the document is not hand delivered, record the time and date of receipt and promptly send written notice of late receipt to the offeror. The agency chief procurement officer may discard the document within 30 days after the date on the notice unless the offeror requests the document be returned.
- C. The agency chief procurement officer shall document a late offer in the procurement file; with as much information as available.
- D. If the solicitation has a designated, continuous day and time for offer opening and an offer is received after the day and time for offer opening, the agency chief procurement officer shall accept and log in the offer for the next scheduled day and time for offer opening.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1). Amended by final rulemaking at 18 A.A.R. 3118, effective January 7, 2013 (12-4). Amended by final rulemaking at 20 A.A.R. 3510, effective February 2, 2015 (Supp. 14-4).

R2-7-F308. Negotiations with Offerors

- A. The agency chief procurement officer may conduct negotiations with any or none of the offerors.
- B. The agency chief procurement officer may conduct negotiations to improve offers in such areas as cost, price, specifications, performance, or terms and conditions, and to achieve best value for the state.

- C. The agency chief procurement officer shall document the results of negotiations in writing by requesting a best and final offer as defined in R2-7-C315.
- D. The agency chief procurement officer shall ensure that negotiations do not disclose any information derived from other offers.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1). Amended by final rulemaking at 20 A.A.R. 3510, effective February 2, 2015 (Supp. 14-4).

R2-7-F309. Contract Award

- A. The agency chief procurement officer shall award the contract to the offeror best qualified based on the evaluation factors set forth in the request for proposal and after making a written determination that the price is fair and reasonable. The agency chief procurement officer shall not award a contract based solely on price.
- B. The agency chief procurement officer shall make a written determination explaining the basis for the award and place it in the procurement file.
- C. The agency chief procurement officer shall award contracts pursuant to A.R.S. § 41-2513(B) through (D) where applicable.
- D. Within 3 days after contract award the agency chief procurement officer shall make the procurement file, including all offers, available for public inspection, redacting information that is confidential under R2-7-103.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1). Amended by final rulemaking at 20 A.A.R. 3510, effective February 2, 2015 (Supp. 14-4).

R2-7-F310. Mistakes Discovered After Award

- A. If a mistake in the offer is discovered after the award, the offeror may request correction or withdrawal in writing, and shall include all of the following in the written request:
1. Explanation of the mistake and any other relevant information;
 2. A request for correction including the corrected offer or a request for withdrawal; and
 3. The reasons why correction or withdrawal is consistent with fair competition and in the best interest of the state.
- B. Based on the considerations of fair competition and the best interest of the state, the agency chief procurement officer may:
1. Allow correction of the mistake;
 2. Cancel all or part of the award; or
 3. Deny correction or withdrawal.
- C. After cancellation of all or part of an award, the agency chief procurement officer may award all or part of the contract to the next responsible offeror, within 120 days of contract award, based on whose offer is determined to be the next most advantageous to the state according to the evaluation factors contained in the solicitation.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1). Amended by final rulemaking at 20 A.A.R. 3510, effective February 2, 2015 (Supp. 14-4).

PART G. OTHER SOURCE SELECTION**R2-7-G301. Request for Information**

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An agency chief procurement officer may issue a request for information to obtain price, delivery, technical information or capabilities for planning purposes.

1. Responses to a request for information are not offers and cannot be accepted to form a binding contract.
2. Information contained in a response to a request for information shall be considered confidential until the procurement process is concluded or two years, whichever occurs first unless authorized by the state procurement administrator.
3. There is no required format to be used for requests for information.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1). Amended by final rulemaking at 18 A.A.R. 3118, effective January 7, 2013 (12-4).

R2-7-G302. Demonstration Projects

- A.** An agency chief procurement officer shall submit a written request to the state procurement administrator to award a contract for a demonstration project. The written request shall contain the following:
 1. Name of the agency or agencies;
 2. Name of the contractor;
 3. Description of the project, including unique and innovative features of the project;
 4. Statement and explanation that the project is in best interest of the state;
 5. Duration of the project; and
 6. Proposed contract terms and conditions.
- B.** The agency chief procurement officer shall obtain approval from the state procurement administrator before proceeding with a demonstration project. The state procurement administrator shall either:
 1. Issue written approval, with any conditions or restrictions;
 2. Request additional information from the agency chief procurement officer; or
 3. Deny the request.
- C.** Demonstration projects shall be provided by the contractor at no cost, and the state shall not be obligated to purchase or lease the services or materials from the contractor.
- D.** The agency chief procurement officer may submit a written request to the state procurement administrator to purchase or lease from the demonstration contractor. The written request shall be submitted within 12 months after the demonstration project begins or within 12 months after the demonstration project ends and contain the following:
 1. Name of the agency or agencies;
 2. Name of the contractor;
 3. Description of the project, including unique and innovative features of the project;
 4. Statement and explanation that lease or purchase is in best interest of the state;
 5. Cost to the state;
 6. Duration of the proposed contract; and
 7. Proposed contract terms and conditions.
- E.** The agency chief procurement officer shall obtain approval from the state procurement administrator before proceeding with purchasing or leasing from the demonstration contractor. The state procurement administrator shall:
 1. Issue written approval, with any conditions or restrictions;
 2. Request additional information from the agency chief procurement officer; or

3. Deny the request.

- F.** The term of the contract resulting from a demonstration project shall not exceed two years.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1).

R2-7-G303. Unsolicited Proposals

- A.** An unsolicited proposal shall be a proposal that is submitted at the initiative of the offeror, and not in response to a solicitation.
- B.** An unsolicited proposal shall be submitted in writing and in sufficient detail for the agency chief procurement officer to understand the proposal.
- C.** An unsolicited proposal shall not be an advance offer to a known state requirement.
- D.** An agency chief procurement officer shall submit a written request to the state procurement administrator to award a contract resulting from an unsolicited proposal. The written request shall contain the following:
 1. Name of the agency or agencies;
 2. Name of the contractor;
 3. Description of the project, including unique and innovative features of the project;
 4. Statement and explanation that project is in best interest of the state;
 5. Duration of the project; and
 6. Proposed contract terms and conditions.
- E.** The agency chief procurement officer shall obtain approval from the state procurement administrator before proceeding with an unsolicited proposal. The state procurement administrator shall:
 1. Issue written approval, with any conditions or restrictions;
 2. Request additional information from the agency chief procurement officer; or
 3. Deny the request.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1).

R2-7-G304. General Services Administration Contracts

- A.** An agency chief procurement officer may purchase products or services using General Services Administration (GSA) schedules or contracts under the following conditions:
 1. Use of the GSA contract or schedule is cost effective and in the best interest of the state;
 2. Price is equal to or less than the contractor's current GSA price;
 3. Price is fair and reasonable;
 4. Contractor is willing to offer GSA pricing and terms to the state;
 5. Comparable products or services are not available under a state or agency contract;
 6. Comparable products or services are not restricted under a set-aside contract; and
 7. Contractor accepts required state contract terms and conditions.
- B.** An agency chief procurement officer shall make a written determination that use of the GSA contract or schedule is in the best interest of the state. The determination shall contain the following:
 1. Name of the contractor;
 2. GSA contract or schedule number;
 3. Procurement description;
 4. Analysis of price, quality, and other relevant factors; and

5. Statement that the price is fair and reasonable.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1).

R2-7-G305. Public-Private Partnership Contracts

- A.** As referenced in this Article, a public-private partnership contract is a government contract and not a partnership. The government shall not jointly own or share property with the contractor and the government shall not be responsible for the contractor's liabilities.
- B.** An agency chief procurement officer shall submit a written request to the state procurement administrator to enter into a public-private partnership contract. The written request shall contain the following:
1. Name of the agency or agencies;
 2. Name of the contractor;
 3. Description of the public-private partnership, including obligations of the agency and the contractor;
 4. Statement and explanation that the project is in best interest of the state;
 5. Proposed contract price and assessment of the proposed value;
 6. Description of the proposed performance measurement criteria and methods;
 7. Duration of the project; and
 8. Proposed contract terms and conditions.
- C.** The agency chief procurement officer shall obtain approval from the state procurement administrator before proceeding with a public-private partnership. The state procurement administrator shall either:
1. Issue written approval, with any conditions or restrictions;
 2. Request additional information from the agency chief procurement officer; or
 3. Deny the request.
- D.** If the request is approved, the contract shall be awarded in accordance with A.R.S. §§ 41-2533, 41-2534, 41-2535, 41-2536, or 41-2537.
- E.** The using agency is responsible for obtaining all necessary approvals, including approvals from the Government Information Technology Agency and Joint Legislative Budget Committee, before entering into a public-private partnership contract.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1).

ARTICLE 4. SPECIFICATIONS

R2-7-401. Preparation of Specifications

- A.** State governmental units may prepare and utilize specifications only under the authority delegated by the state procurement administrator under R2-7-202.
- B.** An agency chief procurement officer delegated the authority to prepare and utilize specifications shall comply with the requirements of A.R.S. § 41-2561 through A.R.S. § 41-2568 and ensure specifications used support maximum practical competition.
- C.** The agency chief procurement officer may contract for the preparation of specifications with persons other than state personnel.
- D.** Notwithstanding the provisions of this Section, the state procurement administrator retains the authority to prepare, issue, revise, and monitor all specifications and plans.
- E.** If a mandatory specification has been designated by the state procurement administrator for a particular material, service, or

construction item, it shall be used unless the state procurement administrator makes a written determination that its use is not advantageous to the state and that another specification may be used.

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Definitions placed in alphabetical order (Supp. 93-2). Section repealed; new Section made by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1).

R2-7-402. Utilization of Specifications

The agency chief procurement officer may use any type of specification that describes the procurement requirement and promotes competition, except that the agency chief procurement officer shall not use proprietary or restrictive specifications without the prior written approval of the state procurement administrator.

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Amended by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1).

R2-7-403. Determination for Use of Brand Name Type Specifications

- A.** The state procurement administrator may authorize the use of a brand name only specification if the state procurement administrator makes a written determination that only the identified brand name item will satisfy the state's needs.
- B.** The agency chief procurement officer shall, to the extent practicable, identify sources from which the designated brand name item can be obtained and shall solicit such sources to achieve the maximum practical competition.
- C.** The agency chief procurement officer may use a brand name or equivalent specification when the agency chief procurement officer determines this type of specification is in the best interest of the state.

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Amended effective April 2, 1993 (Supp. 93-2). Amended by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1). Amended by final rulemaking at 20 A.A.R. 3510, effective February 2, 2015 (Supp. 14-4).

R2-7-404. Conflict of Interest

- A.** No person preparing or assisting in the preparation of specifications, plans or scopes of work shall receive any direct benefit from the utilization of those specifications, plans or scopes of work.
- B.** The state procurement administrator may waive the restriction set forth in subsection (A) of this Section if the state procurement administrator determines in writing that the rule's application would not be in the state's best interest. The determination shall state the specific reasons that the restriction in subsection (A) of this Section has been waived.

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp.

84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Amended effective April 2, 1993 (Supp. 93-2). Section repealed by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1). New Section made by final rulemaking at 18 A.A.R. 3118, effective January 7, 2013 (Supp. 12-4).

R2-7-405. Repealed**Historical Note**

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Amended effective April 2, 1993 (Supp. 93-2). Section repealed by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1).

R2-7-406. Reserved**R2-7-407. Repealed****Historical Note**

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Amended effective April 2, 1993 (Supp. 93-2). Section repealed by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1).

R2-7-408. Repealed**Historical Note**

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Amended effective April 2, 1993 (Supp. 93-2). Section repealed by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1).

R2-7-409. Repealed**Historical Note**

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Amended effective April 2, 1993 (Supp. 93-2). Section repealed by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1).

R2-7-410. Repealed**Historical Note**

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Amended effective April 2, 1993 (Supp. 93-2). Section repealed by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1).

R2-7-411. Repealed**Historical Note**

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective

April 3, 1985 (Supp. 85-2). Amended effective April 2, 1993 (Supp. 93-2). Section repealed by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1).

ARTICLE 5. PROCUREMENT OF CONSTRUCTION AND SPECIFIC PROFESSIONAL SERVICES**R2-7-501. Procurement of Specified Professional and Construction Services**

- A.** The agency chief procurement officer shall procure specified professional services as defined in A.R.S. §§ 41-2578, 41-2579, and 41-2581 in the following manner:
1. Through existing state contracts if available;
 2. In accordance with A.R.S. § 41-2535 and Part D of Article 3 of this Chapter or A.R.S. § 41-2533 procurements not to exceed the amount prescribed in A.R.S. § 41-2535;
 3. May procure services in accordance with A.R.S. §§ 41-2536, 41-2537, or 41-2581.
- B.** Unless an alternate project delivery method is used as permitted under R2-7-503, the agency chief procurement officer shall procure construction in the following manner:
1. Through existing state contracts if available;
 2. In accordance with A.R.S. § 41-2535 and Part D of Article 3 of this Chapter or A.R.S. § 41-2533 for single award procurements not to exceed the amount prescribed in A.R.S. §§ 41-2535 or 41-2579 for multiple award procurements;
 3. In accordance with A.R.S. § 41-2533 for procurements estimated to exceed the amount prescribed in A.R.S. § 41-2535; or
 4. May procure construction in accordance with A.R.S. §§ 41-2536 or 41-2581.
- C.** The agency chief procurement officer shall procure construction through an alternate project delivery method in the following manner:
1. Through existing state contracts if available;
 2. In accordance with A.R.S. § 41-2535 and Part D of Article 3 of this Chapter or A.R.S. § 41-2578 for procurements not estimated to exceed the amount prescribed in A.R.S. § 41-2535;
 3. May procure construction in accordance with A.R.S. §§ 41-2536, 41-2537, or 41-2581.

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Section repealed; new Section made by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1). New Section made by final rulemaking at 18 A.A.R. 3118, effective January 7, 2013 (Supp. 12-4). Amended by final rulemaking at 18 A.A.R. 3118, effective January 7, 2013 (Supp. 12-4).

R2-7-502. Compliance with the Department

A purchasing agency shall comply with the procurement and contract administration requirements of the Department as required by A.R.S. § 41-790 et seq.

Historical Note

Adopted effective April 2, 1993 (Supp. 93-2). Amended by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1).

R2-7-503. Procurement of Construction Using Alternate Project Delivery Method

The agency chief procurement officer may use an alternate project delivery method if it is in the best interest of the state pursuant to A.R.S. §§ 41-2578 and 41-2579, based on the following factors:

1. Cost and cost control method,
2. Value engineering,
3. Market conditions,
4. Schedule,
5. Required specialized expertise,
6. Technical complexity of the project, or
7. Project management.

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Amended effective April 2, 1993 (Supp. 93-2). Section repealed; new Section made by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1). Amended by final rulemaking at 18 A.A.R. 3118, effective January 7, 2013 (Supp. 12-4). Amended by final rulemaking at 20 A.A.R. 3510, effective February 2, 2015 (Supp. 14-4).

R2-7-504. Notice

- A. The agency chief procurement officer shall provide a copy of a solicitation for specified professional services or construction services to any person who requests a copy of the solicitation.
- B. For procurements not estimated to exceed the amount prescribed in A.R.S. § 41-2535, the agency chief procurement officer shall provide notice of the procurement in accordance with Part D of Article 3 of this Chapter, unless otherwise authorized pursuant to A.R.S. §§ 41-2536 or 41-2537.
- C. For procurements estimated to exceed the amount prescribed in A.R.S. § 41-2535:
 1. The agency chief procurement officer shall make the solicitation available to prospective offerors registered at the State Procurement Office for the specific material, service, or construction being solicited; and
 2. The agency chief procurement officer shall advertise at least once in a general circulation or industry trade publication. If practicable, the date of the advertisement shall be at least 14 days before the offer due date.

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Amended effective April 2, 1993 (Supp. 93-2). Section repealed; new Section made by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1). Amended by final rulemaking at 18 A.A.R. 3118, effective January 7, 2013 (Supp. 12-4).

R2-7-505. Selection Committee

- A. The agency chief procurement officer shall appoint a selection committee when required under A.R.S. §§ 41-2578, 41-2579, or 41-2581.
- B. For the procurement of specified professional services not estimated to exceed the amount prescribed in A.R.S. § 41-2581, the selection committee shall meet the requirements of A.R.S. § 41-2578(C)(1) and shall consist of three to five members who are appropriately qualified including the agency chief procurement officer as chair.
- C. For the procurement of specified professional services estimated to exceed the amount prescribed in A.R.S. §§ 41-2578, 41-2579, or 41-2581.

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Section repealed; new Section made by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1). Amended by final rulemaking at 18 A.A.R. 3118, effective January 7, 2013 (Supp. 12-4).

R2-7-506. Bid Security

- A. The agency chief procurement officer shall include the bid security requirements of A.R.S. § 41-2573 in the solicitation.
- B. If an offeror fails to submit the bid security required by A.R.S. § 41-2573 with the offer, the agency chief procurement officer shall reject the offer.
- C. The offeror shall submit bid security in one of the following forms:
 1. An annual or one-time surety bond executed solely by a surety company authorized to transact surety business in this state, issued by the Director of the Department of Insurance under A.R.S. Title 20, Chapter 2, Article 1, and in a format prescribed by A.R.S. § 41-2573 and this Section; or
 2. A certified or cashier check.
- D. The state procurement administrator or, in the case of construction on state property, the Assistant Director of General Services, may issue a written determination to accept the bid security if the bid security fails to comply in a nonsubstantial manner when:
 1. Only one offer is received and there is not sufficient time to re-solicit;
 2. The amount of the bid security submitted, although less than the amount required by the solicitation, is equal to or greater than the difference between the apparent low offer and the next higher acceptable offer; or
 3. The bid security is inadequate as a result of correcting or modifying an offer in accordance with R2-7-B310, if the offeror increases the amount of the security to required limits within two days after notification.
- E. The state procurement administrator or, in the case of construction on state property, the Assistant Director of General Services, shall determine if the bid security may be released without penalty under § 41-2573(E).

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Amended effective April 2, 1993 (Supp. 93-2). Amended by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1).

R2-7-507. Offer Mistakes Discovered After Offer Opening and Before Award

- A. If an apparent mistake, relevant to the award determination is discovered after offer opening and before award, the agency chief procurement officer shall contact the offeror for written confirmation of the offer. The agency chief procurement officer shall designate a time-frame within which the offeror shall either:
 1. Confirm that no mistake was made and assert that the offer stands as submitted; or
 2. Acknowledge that a mistake was made, and include all of the following in a written response:
 - a. Explanation of the mistake and any other relevant information;

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- b. A request for correction including the corrected offer or a request for withdrawal; and
 - c. The reasons why correction or withdrawal is consistent with fair competition and in the best interest of the state.
- B.** An offeror who discovers a mistake in its offer may request correction or withdrawal in writing, and shall include all of the following in the written request:
- 1. Explanation of the mistake and any other relevant information;
 - 2. A request for correction including the corrected offer or a request for withdrawal; and
 - 3. The reasons why correction or withdrawal is consistent with fair competition and in the best interest of the state.
- C.** An agency chief procurement officer may permit an offeror to correct a mistake if the mistake and the intended offer are evident in the uncorrected offer; for example, an error in the extension of unit prices. The agency chief procurement officer shall not permit a correction that is prejudicial to the state or fair competition.
- D.** An agency chief procurement officer shall permit an offeror to furnish information called for in the solicitation but not supplied if the intended offer is evident and submittal of the information is not prejudicial to other offerors.
- E.** An agency chief procurement officer shall make a written determination of whether correction or withdrawal is permitted, based on whether the action is consistent with fair competition and in the best interest of the state.
- F.** If the offeror fails to act under subsection (A), the offeror is considered nonresponsive and the agency chief procurement officer shall place a written determination that the offeror is nonresponsive in the procurement file.

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Amended effective January 13, 1987 (Supp. 87-1). Amended effective April 2, 1993 (Supp. 93-2). Section repealed; new Section made by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1).

R2-7-508. Performance and Payment Bonds

- A.** The agency chief procurement officer shall ensure that performance and payment bonds are executed solely by a surety company or companies holding a certificate of authority to transact surety business in this state issued by the Department of Insurance under A.R.S. Title 20, Chapter 2, Article 1 and in a format prescribed by A.R.S. § 41-2574.
- B.** The contractor shall submit to the state the performance bond and the payment bond upon request of the agency chief procurement officer. If a contractor fails to deliver the required performance bond or payment bond by the designated date, the contractor's offer shall be rejected, its bid security shall be enforced, and award of the contract shall be made as prescribed in this Chapter.

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Repealed effective April 2, 1993 (Supp. 93-2). New Section made by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1).

R2-7-509. Conditions for Use of Substitute Security in Lieu**of Retention**

A contractor may submit substitute security to replace contract payment retention if:

1. The contractor requests the use of substitute security before the first progress payment;
2. The contractor submits an invoice with each progress payment in an amount of no less than 10% of the progress payment, or the contractor submits an invoice once at the beginning of the project in an amount no less than 5% of the total contract amount;
3. The interest earned on the security shall accrue to the benefit of the contractor but shall be retained by the contractor until the agency chief procurement officer has approved completion and acceptance of all work to be performed under the contract; and
4. The contractor ensures that the date of maturity of the security is after the estimated contract completion date, but no later than one year after the estimated contract completion date.

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Amended effective April 2, 1993 (Supp. 93-2). Section repealed; new Section made by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1).

R2-7-510. The Form of Substitute Security in Lieu of Retention

If the conditions identified under R2-7-506 are met, the agency chief procurement officer shall accept a substitute security from a contractor in the form of one of the following:

1. An assignment of a time certificate of deposit by a financial institution licensed by this state;
2. Share certificates of a financial institution or credit union authorized to transact business in this state; or
3. Security issued or guaranteed as to principal and interest by:
 - a. The United States;
 - b. The state; or
 - c. Counties, municipalities, and school districts within this state.

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Section repealed; new Section made by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1).

R2-7-511. Individual Job Order Contracting

- A.** The state procurement administrator may award or authorize an agency chief procurement officer to award job order contracts for job orders estimated to cost \$1,000,000 or less.
- B.** An agency chief procurement officer may use job order contracting for individual job orders estimated to cost \$250,000 or less, provided that:
1. The agency chief procurement officer obtains a cost estimate for the job order, before obtaining a cost proposal from the job order contractor; and
 2. The agency chief procurement officer makes a written determination that award of the job order is in the best interest of the state before awarding a job order.
- C.** When authorized by the state procurement administrator, an agency chief procurement officer may use job order contract-

ing for individual job orders estimated to cost more than \$250,000 or less than or equal to \$1,000,000, provided that:

1. The agency chief procurement officer obtains a cost estimate for the job order from a person as defined in A.R.S. Title 32, Chapter 1, Article 1 before requesting a cost proposal from the job order contractor; and
 2. The agency chief procurement officer makes a written determination that award of the job order is in the best interest of the state before awarding a job order.
- D.** The agency chief procurement officer may request cost proposals from multiple job order contractors or negotiate with a single job order contractor.
- E.** The agency chief procurement officer may authorize contract change orders or amendments that result in the individual job order cost exceeding \$1,000,000 only with authorization from the state procurement administrator.
- F.** Upon completion of the job order, the agency chief procurement officer shall document in the contract file a summary of the estimated or final costs and the reasons the award is in the best interests of the state.
- G.** Conduct the procurement, as necessary in accordance with R2-7-B302, R2-7-B311, R2-7-B313, and R2-7-B315, unless a modified process is approved by the state procurement administrator.

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Amended effective April 2, 1993 (Supp. 93-2). Section repealed; new Section made by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1). Amended by final rulemaking at 18 A.A.R. 3118, effective January 7, 2013 (Supp. 12-4).

R2-7-512. Repealed

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Section repealed by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1).

R2-7-513. Repealed

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Section repealed by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1).

R2-7-514. Repealed

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Section repealed by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1).

R2-7-515. Repealed

Historical Note

Adopted as an emergency effective January 1, 1985, pur-

suant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Amended effective April 2, 1993 (Supp. 93-2). Section repealed by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1).

ARTICLE 6. CONTRACT CLAUSES

R2-7-601. Contract Clauses

The agency chief procurement officer shall include in solicitations and contracts all contract clauses necessary to ensure the state's interests are addressed.

Historical Note

Adopted effective April 2, 1993 (Supp. 93-2). Section repealed; new Section made by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1).

R2-7-602. Assignment of Rights and Duties

A contractor shall not assign or transfer the rights or duties of a state contract without the written consent of the agency chief procurement officer.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1).

R2-7-603. Change of Name

If a contractor requests to change the name in which it holds a state contract, the agency chief procurement officer may, upon receipt of a document indicating name change, enter into a written amendment with the contractor to effect the name change. The amendment shall provide that no other terms and conditions of the contract are changed.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1).

R2-7-604. Contract Change Orders and Amendments

- A.** The agency chief procurement officer may extend or authorize options in a contract provided the price of the extension or option was evaluated under the contractor's original offer.
- B.** Any contract change order or amendment or aggregate change orders or amendments of a contract not covered under subsection (A) that exceeds 25% of the original contract amount may be executed only if the state procurement administrator or, in the case of construction on state property, the Assistant Director of General Services, determines in writing that the change order or amendment is advantageous to the state and the price is determined fair and reasonable pursuant to R2-7-702.
- C.** The agency chief procurement officer may, in situations in which time or economic consideration preclude re-solicitation, negotiate a reduction to the contract, including scope, price, and contract requirements under A.R.S. § 41-2537.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1). Amended by final rulemaking at 20 A.A.R. 3510, effective February 2, 2015 (Supp. 14-4).

R2-7-605. Multi-term Contracts

- A.** The agency chief procurement officer may enter into a contract for materials or services for a period exceeding the time identified in A.R.S. § 41-2546(A), if a written approval from the state procurement administrator is issued prior to offer due date and time.
- B.** The agency chief procurement officer shall submit a request to the state procurement administrator in writing indicating:

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1. The time period requested for the contract;
 2. Documentation that the estimated requirements are reasonable and continuing;
 3. Documentation to demonstrate why more frequent competition is not practicable and that such a contract will serve the best interests of the state.
- C. The agency chief procurement officer shall include in all multi-term contracts a clause specifying that the contract shall be cancelled if monies are not appropriated or otherwise made available to support the continuation of performance in a subsequent fiscal year. If the contract is cancelled under this Section, the contractor may only be reimbursed for the reasonable value of any nonrecurring costs incurred but not amortized in the price of the materials or services delivered under the contract or which are otherwise not recoverable.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1). Amended by final rulemaking at 20 A.A.R. 3510, effective February 2, 2015 (Supp. 14-4).

R2-7-606. Terms and Conditions

- A. The state procurement administrator may publish uniform terms and conditions for use in solicitations and contracts issued by a state governmental unit.
- B. Prior to offer due date and time, the state procurement administrator may authorize an agency chief procurement officer to make changes to uniform terms and conditions.
- C. After offer due date and time, an agency chief procurement officer may negotiate the uniform terms and conditions, as appropriate.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1). Amended by final rulemaking at 20 A.A.R. 3510, effective February 2, 2015 (Supp. 14-4).

R2-7-607. Mandatory Statewide Contracts

State governmental units shall use existing Arizona state contracts to satisfy their needs for those materials and services covered under such contracts, unless authorized by the state procurement administrator.

Historical Note

New Section made by final rulemaking, 18 A.A.R. 3118, effective January 7, 2013 (Supp. 12-4). Amended by final rulemaking at 20 A.A.R. 3510, effective February 2, 2015 (Supp. 14-4).

R2-7-608. Multiple Source Contracts

Multiple award contracts shall be limited to the least number of suppliers necessary to meet the requirements of the state or the cooperative procurement members, unless authorized by the state procurement administrator.

Historical Note

New Section made by final rulemaking, 18 A.A.R. 3118, effective January 7, 2013 (Supp. 12-4).

ARTICLE 7. COST PRINCIPLES**R2-7-701. Expired****Historical Note**

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Amended effective April 2, 1993 (Supp. 93-2). Amended by final rulemaking at 12

A.A.R. 508, effective April 8, 2006 (Supp. 06-1). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 1757, effective May 9, 2017 (Supp. 17-2).

R2-7-702. Determination of Fair and Reasonable Price

- A. For contracts or contract modifications that exceed \$100,000, the agency chief procurement officer shall determine in writing that the price is fair and reasonable only when one of the following requirements is met:
1. The contract or modification is based on adequate price competition;
 2. Price is supported by an established catalog or market prices;
 3. Price is set by law or rule; or
 4. Price is supported by relevant, historical price data.
- B. The agency chief procurement officer shall request the submission of cost or pricing data from the offeror or contractor when:
1. The agency chief procurement officer cannot determine the price is fair and reasonable based on the criteria in subsection (A); or
 2. The agency chief procurement officer determines in writing that it is in the best interest of the state regardless of the amount of the contract or contract modification.
- C. The agency chief procurement officer shall submit a request to the state procurement administrator to waive the requirement for submission of cost or pricing data to the state procurement administrator if the proposed contract or contract modification exceeds \$100,000. The request shall be in writing and state the reasons for the waiver.
- D. The state procurement administrator shall either:
1. Issue written approval of the request for waiver;
 2. Request additional information from the agency chief procurement officer upon which to base a decision; or
 3. Deny the request.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1).

R2-7-703. Submission and Certification of Cost or Pricing Data

- A. The offeror or contractor shall submit certified cost or pricing data in the manner, and within the time-frames, prescribed by the agency chief procurement officer.
- B. The offeror or contractor shall keep all cost or pricing data submitted current until the negotiations are concluded.
- C. The offeror or contractor shall certify cost or pricing data by including a signed statement with the submission that all data is accurate, complete, and current to the best of the offeror's or contractor's knowledge and belief as of a date mutually determined with the agency chief procurement officer.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1).

R2-7-704. Refusal to Submit Cost or Pricing Data

- A. If an offeror fails to submit cost or pricing data in the required form and within the time-frames required, the agency chief procurement officer may reject the offer.
- B. If a contractor fails to submit data to support a contract modification in the form required and within the time-frames required, the agency chief procurement officer may:
1. Reject the contract modification; or
 2. Set the amount of the contract modification subject to the contractor's rights under Article 9 of the Arizona Procurement Code.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1).

R2-7-705. Defective Cost or Pricing Data

- A.** The agency chief procurement officer may reduce the contract price if, upon written determination, the cost or pricing data is defective.
- B.** The agency chief procurement officer shall reduce the contract price in the amount of the defect plus related overhead and profit or fee, if the defective data was used in awarding the contract or contract modification.
- C.** The offeror or contractor may appeal any dispute regarding the existence of defective cost or pricing data or the amount of an adjustment due to defective cost or pricing data as a contract claim under Article 9 of this Chapter. The price, as adjusted by the agency chief procurement officer, shall remain in effect until any claim is settled or resolved under Article 9 of this Chapter.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1).

ARTICLE 8. TRANSFERRED

Article 8, consisting of Sections R2-7-801 through R2-7-810, transferred to Title 2, Chapter 15, Article 3, Sections R2-15-301 through R2-15-210, Department of Administration, General Services Division.

R2-7-801. Transferred**Historical Note**

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Transferred to R2-15-801 (Supp. 91-3).

R2-7-802. Transferred**Historical Note**

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Transferred to R2-15-802 (Supp. 91-3).

R2-7-803. Transferred**Historical Note**

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Transferred to R2-15-803 (Supp. 91-3).

R2-7-804. Transferred**Historical Note**

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Transferred to R2-15-804 (Supp. 91-3).

R2-7-805. Transferred**Historical Note**

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective

April 3, 1985 (Supp. 85-2). Transferred to R2-15-805 (Supp. 91-3).

R2-7-806. Transferred**Historical Note**

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Transferred to R2-15-806 (Supp. 91-3).

R2-7-807. Transferred**Historical Note**

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Transferred to R2-15-807 (Supp. 91-3).

R2-7-808. Transferred**Historical Note**

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Transferred to R2-15-808 (Supp. 91-3).

R2-7-809. Transferred**Historical Note**

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Transferred to R2-15-809 (Supp. 91-3).

R2-7-810. Transferred**Historical Note**

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Transferred to R2-15-810 (Supp. 91-3).

ARTICLE 9. LEGAL AND CONTRACTUAL REMEDIES**R2-7-901. Repealed****Historical Note**

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Amended effective April 2, 1993 (Supp. 93-2). Section repealed by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1).

R2-7-902. Repealed**Historical Note**

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Section repealed by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1).

R2-7-903. Repealed

(Supp. 06-1).

R2-7-931. Repealed

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Section repealed by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1).

R2-7-932. Repealed

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Section repealed by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1).

R2-7-933. Repealed

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Section repealed by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1).

R2-7-934. Repealed

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Amended effective April 2, 1993 (Supp. 93-2). Section repealed by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1).

R2-7-935. Repealed

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Section repealed by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1).

R2-7-936. Repealed

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Section repealed by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1).

R2-7-937. Repealed

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Section repealed by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1).

PART A. PROTEST OF SOLICITATIONS AND CONTRACT AWARDS

R2-7-A901. Protest of Solicitations and Contract Awards

- A.** Any interested party may protest a solicitation, a determination of not susceptible for award, or the award of a contract.
- B.** The interested party shall file the protest in writing with the agency chief procurement officer, with a copy to the state procurement administrator, and shall include the following information:
1. The name, address and telephone number of the interested party;
 2. The signature of the interested party or the interested party's representative;
 3. Identification of the purchasing agency and the solicitation or contract number;
 4. A detailed statement of the legal and factual grounds of the protest including copies of relevant documents; and
 5. The form of relief requested.
- C.** If the protest is based upon alleged improprieties in a solicitation that are apparent before the offer due date and time, the interested party shall file the protest before the offer due date and time.
- D.** In cases other than those covered in subsection (C), the interested party shall file the protest within 10 days after the agency chief procurement officer makes the procurement file available for public inspection.
- E.** The interested party may submit a written request to the agency chief procurement officer for an extension of the time limit for protest filing set forth in subsection (D). The written request shall be submitted before the expiration of the time limit set forth in subsection (D) and shall set forth good cause as to the specific action or inaction of the purchasing agency that resulted in the interested party being unable to submit the protest within the 10 days. The agency chief procurement officer shall approve or deny the request in writing, state the reasons for the determination, and, if an extension is granted set forth a new date for submission of the filing.
- F.** If the interested party shows good cause, the agency chief procurement officer may consider a protest that is not timely filed.
- G.** The agency chief procurement officer shall immediately give notice of a protest to all offerors.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1).

R2-7-A902. Stay of Procurements During the Protest

- A.** If a protest is filed before the solicitation due date, before the award of a contract, or before performance of a contract has begun, the agency chief procurement officer shall make a written determination to either:
1. Proceed with the award or contract performance, or
 2. Stay all or part of the procurement if there is a reasonable probability the protest will be upheld or that a stay is in the best interest of the state.
- B.** The agency chief procurement officer shall provide the interested party, state procurement administrator, and other interested parties with a copy of the written determination.
- C.** The agency chief procurement officer may stay all or part of the procurement if it is determined that there is a reasonable probability the protest will be upheld or that a stay is in the best interest of the state. Determination of the stay decision shall be issued no later than the time of issuance of a procurement officer's decision in accordance with R2-7-A903.
- D.** Should the stay request be denied by the agency chief procurement officer the protestant may request a procurement stay from the state procurement administrator. Such requests for a

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procurement stay shall be submitted within 10 days of notification of the stay denial by the agency chief procurement officer.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1). Amended by final rulemaking at 18 A.A.R. 3118, effective January 7, 2013 (Supp. 12-4).

R2-7-A903. Resolution of Solicitation and Contract Award Protests

- A. The agency chief procurement officer has the authority to resolve a protest.
- B. The agency chief procurement officer shall issue a written decision within 14 days after a protest has been filed under R2-7-A901. The decision of the agency chief procurement officer shall contain the basis for the decision and a statement that the decision may be appealed to the Director within 30 days from receipt of the decision.
- C. The agency chief procurement officer shall furnish the decision to the interested party, by certified mail, return receipt requested, or by any other method that provides evidence of receipt, with a copy to the state procurement administrator and the director.
- D. The agency chief procurement officer may submit a written request to the director for an extension of the time limit for decisions under subsection (B). The director shall approve or deny the request in writing, state the reasons for the determination, and, if an extension is granted, set forth a new date for submission of the decision, not to exceed an additional 30 days. The director shall notify the agency chief procurement officer, the interested party, and the state procurement administrator in writing that the time for the issuance of a decision has been extended and the date by which a decision shall be issued.
- E. If the agency chief procurement officer fails to issue a decision within the time limits set forth in this Article, the interested party may proceed as if the agency chief procurement officer had issued an adverse decision.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1).

R2-7-A904. Remedies by the Agency Chief Procurement Officer

- A. If the agency chief procurement officer sustains a protest in whole or part and determines that a solicitation, a determination of not susceptible for award, or contract award does not comply with the procurement statutes and regulations, the agency chief procurement officer shall implement an appropriate remedy.
- B. In determining an appropriate remedy, the agency chief procurement officer shall consider all the circumstances surrounding the procurement or proposed procurement including:
 1. The seriousness of the procurement deficiency;
 2. The degree of prejudice to other interested parties or to the integrity of the procurement system;
 3. The good faith of the parties;
 4. The extent of performance;
 5. The costs to the state;
 6. The urgency of the procurement;
 7. The impact on the agency's mission; and
 8. Other relevant issues.
- C. An agency chief procurement officer may implement any of the following appropriate remedies:
 1. Decline to exercise an option to renew under the contract;

2. Terminate the contract;
3. Amend the solicitation;
4. Issue a new solicitation;
5. Award a contract consistent with procurement statutes and regulations; or
6. Render such other relief as determined necessary to ensure compliance with procurement statutes and regulations.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1).

R2-7-A905. Appeals to the Director

- A. An interested party may appeal the decision entered or deemed to be entered by the agency chief procurement officer to the director within 30 days after the date the decision is received or deemed received under R2-7-A903. The interested party shall file a copy of the appeal with the director, the agency chief procurement officer, and the state procurement administrator.
- B. The interested party shall file the appeal in writing and shall include the following information:
 1. The information prescribed in R2-7-A901(B) including the identification of confidential information under R2-7-103;
 2. A copy of the decision of the agency chief procurement officer; and
 3. The precise factual or legal error in the decision of the agency chief procurement officer from which an appeal is taken.
- C. The director may consider any appeal that is not filed timely if:
 1. The interested party shows good cause; or
 2. The director finds there is good cause.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1).

R2-7-A906. Notice of Appeal to the Director

- A. The agency chief procurement officer shall promptly give notice of the appeal to all offerors.
- B. The director shall, upon request, furnish copies of the appeal to all offerors subject to the provisions of R2-7-103.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1).

R2-7-A907. Stay of Procurement During Appeal to Director

- A. If a stay is issued under R2-7-A902, the filing of an appeal shall automatically continue the stay, unless the Director makes a written determination that the award of the contract or a notice to proceed with contract performance is necessary to protect the substantial interests of the state.
- B. Following a review of the agency chief procurement officer's or the state procurement officer's decision and the interested party's appeal, the director may stay the procurement if the director determines that there is a reasonable probability the protest will be upheld or that a stay is in the best interests of the state.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1).

R2-7-A908. Agency Report

- A. The agency chief procurement officer shall file a complete report on the appeal with the director and the state procurement administrator within 21 days after the date the appeal is

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filed, at the same time furnishing a copy of the report to the interested party. The agency chief procurement officer shall also provide a copy of the report to any interested parties who request a copy, at their cost. The report shall contain copies of:

1. The appeal;
2. The offer submitted by the interested party;
3. The offer of the firm that is being considered for award;
4. The solicitation, including the specifications or portions relevant to the appeal;
5. The abstract of offers or relevant portions;
6. Any other documents that are relevant to the protest; and
7. A statement by the agency chief procurement officer setting forth findings, actions, recommendations and any additional evidence or information necessary to determine the validity of the appeal.

- B.** The agency chief procurement officer may submit a written request to the director for an extension of the time period for filing the report as prescribed in subsection (A), identifying the reason for extension. The director shall approve or deny the request in writing, state the reasons for the determination, and, if an extension is granted, set forth a new date for the submission of the report. The director shall notify the agency chief procurement officer, the state procurement administrator, and the interested party in writing that the time for the submission of the report is extended, providing the date on which the report must be submitted.
- C.** The interested party shall file comments on the agency report with the director within 10 days after receipt of the report. The interested party shall provide copies of the comments to the agency chief procurement officer, the state procurement administrator, and other interested parties.
- D.** The interested party may submit a written request to the director for an extension of the period for submission of comments, identifying the reasons for the extension. The director shall approve or deny the request in writing, state the reasons for the determination, and, if an extension is granted, set forth a new date for the submission of filing comments. The director shall notify the agency chief procurement officer and the state procurement administrator of any extension.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1). Amended by final rulemaking at 18 A.A.R. 3118, effective January 7, 2013 (Supp. 12-4).

R2-7-A909. Remedies by the Director

If the Director sustains the appeal in whole or part and determines that a solicitation, a not susceptible for award determination, or an award does not comply with procurement statutes and regulations, the director shall implement remedies as provided in R2-7-A904 or R2-7-A910.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1). Amended by final rulemaking at 20 A.A.R. 3510, effective February 2, 2015 (Supp. 14-4).

R2-7-A910. Informal Settlement Conference

In any protest, claim or debarment proceeding, the Director may request to hold an informal settlement conference with all interested parties. The conference may be held at any time prior to a final administrative decision. If an informal settlement conference is held, a person with the authority to act on behalf of the interested party must be present. The agency chief procurement officer shall notify the interested parties in writing that statements, either written or oral, made at the conference, including a written document, cre-

ated or expressed solely for the purpose of settlement negotiations are inadmissible in any subsequent administrative or judicial hearing. Should any interested party choose not to participate in an informal settlement conference, the Director, or the Director's designee, in his or her discretion, may conduct the conference with those interested parties that appear, or reschedule the conference, or terminate the conference. If the informal settlement conference results in a full settlement agreement between all interested parties, that agreement shall be reduced to writing, signed by the interested parties, and entered as the final administrative decision in the proceeding. If the interested parties do not reach agreement on all matters at issue in the proceedings, but do agree to resolve one or some of the issues, that partial agreement shall be reduced to writing, be signed by the interested parties, and bind the interested parties through the remainder of the proceedings. If the Director, or the Director's designee, participates in an informal settlement conference, the Director, or the Director's designee, may not participate in or attempt to influence the outcome of the final administrative decision. Further, in making a final administrative decision, the Director shall not give any weight to whether or not an informal settlement conference has been held, or to any consideration of the perceived success or failure of the informal settlement conference.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1). R2-7-A910 renumbered to R2-7-A911; new Section R2-7-A910 made by final rulemaking at 20 A.A.R. 3510, effective February 2, 2015 (Supp. 14-4).

R2-7-A911. Dismissal Before Hearing

- A.** The Director may dismiss, upon written determination, an appeal in whole or in part before scheduling a hearing if:
1. The appeal does not state a valid basis for protest;
 2. The appeal is untimely as prescribed under R2-7-A905; or
 3. The appeal attempts to raise issues not raised in the protest.
- B.** The Director shall notify the interested party, the agency chief procurement officer, and the state procurement administrator in writing of a determination to dismiss an appeal before hearing.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1). R2-7-A911 renumbered to R2-7-A912; new Section R2-7-A911 renumbered from R2-7-A910 and amended by final rulemaking at 20 A.A.R. 3510, effective February 2, 2015 (Supp. 14-4).

R2-7-A912. Hearing

The Director shall resolve appeals of solicitation or contract award decisions as contested cases under A.R.S. § 41-1092.07.

Historical Note

New Section R2-7-A912 renumbered from R2-7-A911 and amended by final rulemaking at 20 A.A.R. 3510, effective February 2, 2015 (Supp. 14-4).

PART B. CONTRACT CLAIMS**R2-7-B901. Controversies Involving Contract Claims Against the State**

- A.** A claimant shall file a contract claim with the agency chief procurement officer, with a copy to the state procurement administrator, within 180 days after the claim arises. The claim shall include the following:
1. The name, address, and telephone number of the claimant;

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2. The signature of the claimant or claimant's representative;
 3. Identification of the purchasing agency and the solicitation or contract number;
 4. A detailed statement of the legal and factual grounds of the claim including copies of the relevant documents; and
 5. The form and dollar amount of the relief requested.
- B.** The agency chief procurement officer shall have the authority to settle and resolve contract claims, except that the agency chief procurement officer shall receive prior written approval of the state procurement administrator for the settlement or resolution of a claim in excess of the amount prescribed in A.R.S. § 41-2535.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1).

R2-7-B902. Agency Chief Procurement Officer's Decision

- A.** If a claim cannot be resolved under R2-7-B901, the agency chief procurement officer shall, upon a written request by the claimant for a final decision, issue a written decision no more than 60 days after the request is filed. Before issuing a final decision, the agency chief procurement officer shall review the facts pertinent to the claim and secure any necessary assistance from legal, fiscal, and other advisors.
- B.** The agency chief procurement officer shall furnish the decision to the claimant, by certified mail, return receipt requested, or by any other method that provides evidence of receipt, with a copy to the state procurement administrator. The decision shall include:
1. A description of the claim;
 2. A reference to the pertinent contract provision;
 3. A statement of the factual areas of agreement or disagreement;
 4. A statement of the agency chief procurement officer's decision, with supporting rationale;
 5. A paragraph which substantially states: "This is the final decision of the agency chief procurement officer. This decision may be appealed to the director of the Department of Administration. If you appeal, you must file a written notice of appeal containing the information required in R2-7-B904(B) with the director within 30 days from the date you receive this decision."

Historical Note

New Section made by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1).

R2-7-B903. Issuance of a Timely Decision

If the agency chief procurement officer fails to issue a decision within 60 days after the request is filed, the claimant may proceed as if the agency chief procurement officer had issued an adverse decision.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1).

R2-7-B904. Appeals and Reports to the Director

- A.** The claimant may appeal the final decision of the agency chief procurement officer to the director within 30 days from the date the decision is received. The claimant shall file a copy of the appeal with the director, the agency chief procurement officer, and the state procurement administrator.
- B.** The claimant shall file the appeal in writing and shall include the following:
1. A copy of the decision of the agency chief procurement officer;

2. A statement of the factual areas of agreement or disagreement; and
 3. The precise factual or legal error in the decision of the agency chief procurement officer from which an appeal is taken.
- C.** The agency chief procurement officer shall file a complete report on the appeal with the director and the state procurement administrator within 14 days from the date the appeal is filed, providing a copy to the claimant at that time by certified mail, return receipt requested, or by any other method that provides evidence of receipt. The report shall include a copy of the claim, a copy of the agency chief procurement officer's decision, if applicable, and any other documents that are relevant to the claim.
- D.** The director shall resolve appeals on claim decisions as contested cases under A.R.S. § 41-1092.07.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1).

R2-7-B905. Controversies Involving State Claims Against the Contractor

If the agency chief procurement officer is unable to resolve, by mutual agreement, a claim asserted by the state against a contractor, the agency chief procurement officer shall promptly refer the matter in writing to the director for resolution under A.R.S. § 41-1092.07. The agency chief procurement officer shall furnish a copy of the claim to the state procurement administrator.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1).

PART C. DEBARMENTS AND SUSPENSIONS**R2-7-C901. Authority to Debar or Suspend**

The director has the sole authority to debar or suspend a person from participating in state procurements under A.R.S. § 41-2613.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1).

R2-7-C902. Initiation of Debarment

Upon receipt of information concerning a possible cause for debarment, the director shall investigate the possible cause. If the director has a reasonable basis to believe that a cause for debarment exists, the director may propose debarment under R2-7-C904.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1).

R2-7-C903. Period of Debarment

- A.** The director shall not establish the period of time for a debarment that exceeds three years from the date of the debarment determination.
- B.** If debarment is based solely upon debarment by another governmental agency, the director may establish that the period of debarment is to run concurrently with the period established by the other debarring agency.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1).

R2-7-C904. Notice of Debarment and Hearing

- A.** If debarment is proposed, the director shall notify the person and affected affiliates in writing within seven days by certified mail, return receipt requested, or any other method that pro-

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vides evidence of receipt. The notice shall state that the person and affected affiliates have the right to a hearing to contest the proposed debarment.

- B. The person proposed for debarment and any affected affiliates shall file a written request for a hearing within 10 days of receipt of the director's notice of proposed debarment.
- C. The hearing shall be conducted as a contested case under A.R.S. §§ 41-1092.07 and 41-2613.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1).

R2-7-C905. Imputed Knowledge

- A. The director may attribute improper conduct to an affiliate for purposes of debarment where the impropriety occurred in connection with the affiliate's duties for or on behalf of, or with the knowledge, approval, or acquiescence of, the contractor.
- B. The director may attribute improper conduct of a person or its affiliate having a contract with a contractor to the contractor for purposes of debarment where the impropriety occurred in connection with the person's duties for or on behalf of, or with the knowledge, approval, or acquiescence of, the contractor.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1).

R2-7-C906. Reinstatement

- A. The director may at any time after a final decision on a debarment reinstate a debarred person or rescind the debarment upon a determination that the cause upon which the debarment is based no longer exists.
- B. Any debarred person may request reinstatement by submitting a petition to the director supported by documentary evidence showing that the cause for debarment no longer exists or has been substantially mitigated.
- C. The director may require a hearing on the request for reinstatement.
- D. The director shall make a written decision on reinstatement within 30 days after the request is filed and specify the factors on which it is based.
- E. Reinstatement decisions by the director are not subject to administrative review.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1).

R2-7-C907. Limited Participation

The director may allow a debarred person to participate in state contracts on a limited basis during the debarment period upon a written determination that participation is advantageous to the state. The determination shall specify the factors on which it is based and define the extent of the limits imposed.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1).

R2-7-C908. Suspension

- A. If the director determines that reasonable grounds for debarment exist, the director may suspend a person from receiving any award under R2-7-C910.
- B. For purposes of suspension, a person's conduct may be attributed to an affiliate or another person under R2-7-C905.
- C. The director shall not suspend a person pending debarment unless compelling reasons require suspension to protect state interests.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1).

R2-7-C909. Period and Scope of Suspension

Unless otherwise agreed to by the parties, the director shall not implement a period of suspension of more than 35 days without satisfying the notice requirements of R2-7-C910.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1).

R2-7-C910. Notice, Hearing, Determination, and Appeal

- A. The director shall notify the person suspended by certified mail, return receipt requested, or by any other method that provides evidence of receipt.
- B. The notice of suspension shall state:
 1. The basis for suspension;
 2. The period, including dates, of the suspension;
 3. That offers received from the person will not be considered; and
 4. That the person is entitled to a hearing on the suspension if the person files a written request for a hearing with the director within 30 days after receipt of the notice.
- C. Within 30 days receipt of the notice of suspension, the suspended party may file a written request for hearing with the director. The appeal shall include the following information:
 1. A copy of the decision of the director; and
 2. The precise factual or legal error in the decision from which the appeal is taken.
- D. The suspension shall be resolved as an appealable agency action under A.R.S. §§ 41-1092.03 and 41-2613.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1).

R2-7-C911. Master List

- A. The director shall maintain a master list of debarments, suspensions, and voluntary exclusions under this Article.
- B. The master list shall show at a minimum, the following information:
 1. The names and vendor numbers of those persons whom the state has debarred or suspended under this Article;
 2. The statutory authority for the action;
 3. The period of debarment or suspension, including the expiration date;
 4. The name of the debarring or suspending agency, if the state's debarment or suspension is based on debarment or suspension by another governmental agency; and
 5. A separate section listing persons voluntarily excluded from participation in state contracts.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1).

PART D. HEARING PROCEDURES**R2-7-D901. Hearings**

If a hearing is required or permitted under this Chapter, the director shall refer the matter to the Office of Administrative Hearings for findings of fact, conclusions of law, and a recommended decision. The director may also direct the parties to engage in settlement negotiations or alternative dispute resolution procedures before referring the matter for a hearing.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 508,

effective April 8, 2006 (Supp. 06-1).

R2-7-D902. Rehearing of Director's Decision

- A. Any person, including an agency chief procurement officer, who is aggrieved by the director's decision may file a written request for rehearing of the decision under A.R.S. § 41-1092.09.
- B. The director, within the time for filing a request for rehearing under this rule, may upon the director's own initiative, order a rehearing for any reason for which a rehearing may have been granted on request of a party.

Historical Note

New Section made by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1).

ARTICLE 10. INTERGOVERNMENTAL PROCUREMENT

R2-7-1001. Approval to Enter into a Cooperative Purchasing Agreement

- A. Agency chief procurement officers may use Arizona state contracts without a cooperative purchasing agreement.
- B. Agency chief procurement officers shall submit a written request to the state procurement administrator before participating in a cooperative purchasing agreement with another public procurement unit or group of public procurement units. The written request for approval shall specify the manner which the administering public procurement unit complies with A.R.S. § 41-2634.
- C. The state procurement administrator shall either:
 1. Issue written approval, with any conditions or restrictions;
 2. Request additional information from the state government unit; or
 3. Deny the request.

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Section repealed; new Section made by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1).

R2-7-1002. Cooperative Purchasing Agreement Administered by an Agency Chief Procurement Officer

- A. An agency chief procurement officer shall ensure that any cooperative purchasing agreement administered for use by other eligible procurement units under A.R.S. § 41-2632 provides that:
 1. Payment for materials or services and inspection and acceptance of materials or services are the responsibility of the using eligible procurement unit;
 2. Failure of an eligible procurement unit to secure performance from the contractor in accordance with the terms and conditions of its purchase order does not necessarily require the state to exercise rights or remedies;
 3. The exercise of any rights or remedies by the eligible procurement unit shall be the exclusive obligation of that unit. The state, as the contract administrator and without subjecting itself to any liability, may join in the resolution of any controversy;
 4. The eligible procurement unit shall not use an Arizona state contract as a method for obtaining additional concessions or reduced prices for similar material or services; and
 5. An agency chief procurement officer may terminate without notice any cooperative purchasing agreement if the

eligible procurement unit fails to comply with the terms of the contract.

- B. The state procurement administrator may authorize a state governmental unit to establish an Arizona state contract which may be used by designated eligible procurement units.

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Section repealed; new Section made by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1).

R2-7-1003. Purchasing from a Cooperative Contract

- A. The agency chief procurement officer shall not procure materials, services, professional services, construction or construction services from any cooperative contracts available under an existing Arizona state contract, unless authorized by the state procurement administrator.
- B. If it is in the best interest of the state and at the discretion of the agency chief procurement officer, a cooperative contract may be used if the following criteria, at a minimum, are met:
 1. The cooperative contract was awarded through the competitive process and documentation is available to substantiate the award, including:
 - a. Bidder's list,
 - b. Solicitation included evaluation factors,
 - c. Multiple offers received,
 - d. Bid tabulation and evaluation offers, and
 - e. Basis for cooperative contract award with established evaluation factors.
 2. Cost analysis to determine price is fair and reasonable as prescribed by R2-7-702;
 3. Review of cooperative contract terms and conditions; and
 4. Vendor's willingness to extend cooperative contract to the state.
- C. Purchases under a cooperative contract as permitted by this subsection shall not, in the aggregate, exceed 25% of the initial value, or estimated value for term contracts, of the cooperative contract or \$500,000, whichever is lesser, unless the state procurement administrator determines in writing that the purchase is in the best interest of the state and the price is determined fair and reasonable pursuant to R2-7-702.

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Amended effective April 2, 1993 (Supp. 93-2). Section repealed; new Section made by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1). Section R2-7-1003 renumbered to R2-7-1004; new Section R2-7-1003 made by final rulemaking at 20 A.A.R. 3510, effective February 2, 2015 (Supp. 14-4).

R2-7-1004. Establishment of a Committee as Required by A.R.S. § 41-2636

- A. The Director shall appoint a committee as required by A.R.S. § 41-2636.
- B. The committee shall be comprised of at least seven members, including the committee chair, representing:
 1. Arizona Correctional Industries ("ACI");
 2. Arizona Industries for the Blind ("AIB");
 3. Certified nonprofit agency that serves individuals with disabilities (CNAID) as defined in A.R.S. § 41-2636(G);
 4. Other public procurement units.

- C. The state procurement administrator or the state procurement administrator's designee shall chair the committee.
- D. The committee chair may appoint sub-committees to assist in the evaluation of materials and services under consideration by the committee as a set-aside.
- E. The committee shall meet at least once each fiscal year quarter to report compliance with A.R.S. §41-2636(F).

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Amended effective April 2, 1993 (Supp. 93-2). Section repealed; new Section made by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1). Section R2-7-1004 renumbered to R2-7-1005; new Section R2-7-1004 renumbered from R2-7-1003 and amended by final rulemaking at 20 A.A.R. 3510, effective February 2, 2015 (Supp. 14-4).

R2-7-1005. Certification as Non-Profit Agency for Disabled Individuals

- A. A non-profit organization may request written approval from the committee for certified status as a non-profit agency for disabled individuals for the purpose of being eligible for set-aside contracts by submitting information that satisfies the criteria identified in A.R.S. § 41-2636(A) and 41-2636(G).
- B. The committee shall review the information submitted and respond to the requestor in writing by:
 1. Approving the request for certification;
 2. Denying the request for certification; or
 3. Requesting more information.

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Amended effective April 2, 1993 (Supp. 93-2). Section repealed; new Section made by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1). Section R2-7-1005 renumbered to R2-7-1006; new Section R2-7-1005 renumbered from R2-7-1004 and amended by final rulemaking at 20 A.A.R. 3510, effective February 2, 2015 (Supp. 14-4).

R2-7-1006. Application for Approval as Required by A.R.S. § 41-2636 to Become a Certified Non-Profit Agency for Disabled Individuals

- A. A non-profit organization requesting certification by the committee as a non-profit agency for disabled individuals shall submit the following written information to the State Procurement Office, attention of the committee chair:
 1. Name of organization, address, contact name, and contact information;
 2. Description of the non-profit activity center;
 3. Evidence of the organization's non-profit status;
 4. A statement that the business is operated in accordance with A.R.S. § 41-2636(G);
 5. A statement of Occupational Safety and Health Administration compliance; and
 6. The signature and title of the responsible party within the applicant's organization.
- B. The committee shall review the submitted application at the next scheduled committee meeting and may do any of the following:
 1. Approve the organization as a certified non-profit agency for disabled individuals;

2. Table the application and request additional information; or
3. Decline the application.

Historical Note

Former Section R2-7-1006 adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Section repealed, new Section R2-7-1006 renumbered from R2-7-1007 and amended effective April 2, 1993 (Supp. 93-2). Section repealed; new Section made by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1). Section R2-7-1006 renumbered to R2-7-1007; new Section R2-7-1006 renumbered from R2-7-1005 and amended by final rulemaking at 20 A.A.R. 3510, effective February 2, 2015 (Supp. 14-4).

R2-7-1007. Approval of Specific Materials or Services for Set-aside Use

- A. ACI, AIB, CNAID shall submit information to the committee to request approval of the material or service for mandatory set-aside use. The applicant shall include the following information:
 1. A description of the specific material or service;
 2. The pricing offered;
 3. Documentation that the pricing offered is fair market pricing; and
 4. Information regarding availability.
- B. The committee shall evaluate each offered material or service to determine:
 1. The existence and extent of a need within state governmental units for the material or service;
 2. The ability to produce and deliver the material or service to meet the reasonable requirements of the state governmental units; and
 3. Whether the offered price for the material or service is reasonable.
- C. The committee may:
 1. Approve the requested material or service for use as a mandatory set-aside contract;
 2. Establish a sub-committee to study and make a recommendation on the request;
 3. Request additional information;
 4. Deny the request; or
 5. Designate the material or service as available for optional use by a state governmental unit or local public procurement unit under A.R.S. §41-2636(E).

Historical Note

Former Section R2-7-1007 adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective April 3, 1985 (Supp. 85-2). Section renumbered to R2-7-1006, new Section R2-7-1007 adopted effective April 2, 1993 (Supp. 93-2). Section repealed; new Section made by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1). Section R2-7-1007 renumbered to R2-7-1008; new Section R2-7-1007 renumbered from R2-7-1006 and amended by final rulemaking at 20 A.A.R. 3510, effective February 2, 2015 (Supp. 14-4).

R2-7-1008. Expired

Historical Note

Adopted as an emergency effective January 1, 1985, pursuant to A.R.S. § 41-1003, valid for only 90 days (Supp. 84-6). Emergency expired. Permanent rule adopted effective

tive April 3, 1985 (Supp. 85-2). Former Section R2-7-1008 renumbered to R2-7-1009, new Section R2-7-1008 adopted effective April 2, 1993 (Supp. 93-2). Section repealed; new Section made by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1). Section R2-7-1008 renumbered to R2-7-1009; new Section R2-7-1008 renumbered from R2-7-1007 and amended by final rulemaking at 20 A.A.R. 3510, effective February 2, 2015 (Supp. 14-4). Section expired under A.R.S. § 41-1056(J) at 23 A.A.R. 1757, effective May 9, 2017 (Supp. 17-2).

R2-7-1009. Contract Awards Initiated by an Agency Chief Procurement Officer or Local Public Procurement Unit

- A. Competition is not required under A.R.S. § 41-2636(D) to enter into a contract for a material or service that is offered from a set-aside agency, but may be used at the discretion of the agency chief procurement officer or local public procurement unit. If competition is used, an agency chief procurement officer may either:
1. Seek competition only from applicable set-aside agencies; or
 2. Seek competition under A.R.S. §§ 41-2533, 41-2534, or 2535.
- B. Contracts awarded under this Section, shall not exceed five years, including any renewal options.

Historical Note

Emergency rule adopted effective July 17, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-3). Emergency expired. Emergency rule re-adopted without change effective December 18, 1991, pursuant to A.R.S. § 41-1026, valid for only 90 days (Supp. 91-4). Emergency expired, text rescinded. Former Section R2-7-1009 renumbered to R2-7-1010, new Section R2-7-1009 renumbered from R2-7-1008 and amended effective April 2, 1993 (Supp. 93-2). Section repealed; new Section made by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1). Section R2-7-1009 renumbered to R2-7-1010; new Section R2-7-1009 renumbered from R2-7-1008 and amended by final rulemaking at 20 A.A.R. 3510, effective February 2, 2015 (Supp. 14-4).

R2-7-1010. Set-aside Application Dispute Process

- A. Any interested party may dispute any committee decision.
- B. An interested party shall submit the dispute of a committee decision to the committee chair in writing and shall include:
1. Name, address, and telephone number of the person submitting the dispute;
 2. Signature of the person or the person's representative;
 3. Identification of the set-aside application disputed;
 4. A detailed statement of the legal and factual grounds for the dispute including copies of relevant documents; and
 5. The form of relief requested.
- C. A dispute of a set-aside application shall be filed with the committee chair through the State Procurement Office within 14 days after the person who submits the dispute knows or should have known the basis of the dispute.
- D. The committee chair shall promptly give written notice of the dispute to the set-aside applicant and the committee.
- E. The committee chair shall resolve the dispute. The committee chair shall issue a written decision within 14 days after the date the dispute has been filed. If the committee chair fails to issue a decision within 14 days, the person who submits the dispute may proceed as if the dispute has been denied.
- F. An appeal of the decision of the committee chair shall be made to the director under R2-7-A905, substituting "committee chair" for "agency procurement officer."

Historical Note

Former Section R2-7-1009 renumbered to R2-7-1010 effective April 2, 1993 (Supp. 93-2). New Section R2-7-1010 renumbered from R2-7-1009 and amended by final rulemaking at 20 A.A.R. 3510, effective February 2, 2015 (Supp. 14-4).

ARTICLE 11. RESERVED

ARTICLE 12. RESERVED

ARTICLE 13. REPEALED

R2-7-1301. Repealed

Historical Note

New Section made by final rulemaking at 12 A.A.R. 508, effective April 8, 2006 (Supp. 06-1). Repealed by final rulemaking at 18 A.A.R. 3118, effective January 7, 2013 (Supp. 12-4).

41-2501. Applicability

- A. This chapter applies only to procurements initiated after January 1, 1985 unless the parties agree to its application to procurements initiated before that date.
- B. This chapter applies to every expenditure of public monies, including federal assistance monies except as otherwise specified in section 41-2637, by this state, acting through a state governmental unit as defined in this chapter, under any contract, except that this chapter does not apply to either grants as defined in this chapter, or contracts between this state and its political subdivisions or other governments, except as provided in chapter 24 of this title and in article 10 of this chapter. This chapter also applies to the disposal of state materials. This chapter and rules adopted under this chapter do not prevent any state governmental unit or political subdivision from complying with the terms of any grant, gift, bequest or cooperative agreement.
- C. All political subdivisions and other local public agencies of this state may adopt all or any part of this chapter and the rules adopted pursuant to this chapter.
- D. Notwithstanding any other law, sections 41-2517 and 41-2546 apply to any agency as defined in section 41-1001, including the office of the governor.
- E. The Arizona board of regents and the legislative and judicial branches of state government are not subject to this chapter except as prescribed in subsection F of this section.
- F. The Arizona board of regents and the judicial branch shall adopt rules prescribing procurement policies and procedures for themselves and institutions under their jurisdiction. The rules must be substantially equivalent to the policies and procedures prescribed in this chapter.
- G. The Arizona state lottery commission is exempt from this chapter for procurement relating to the design and operation of the lottery or purchase of lottery equipment, tickets and related materials. The executive director of the Arizona state lottery commission shall adopt rules substantially equivalent to the policies and procedures in this chapter for procurement relating to the design and operation of the lottery or purchase of lottery equipment, tickets or related materials. All other procurement shall be as prescribed by this chapter.
- H. The Arizona health care cost containment system administration is exempt from this chapter for provider contracts pursuant to section 36-2904, subsection A and contracts for goods and services, including program contractor contracts pursuant to title 36, chapter 29, articles 2 and 3 and contracts with regional behavioral health authorities pursuant to title 36, chapter 34. All other procurement, including contracts for the statewide administrator of the program pursuant to section 36-2903, subsection B, shall be as prescribed by this chapter.
- I. Arizona correctional industries is exempt from this chapter for purchases of raw materials, components and supplies that are used in the manufacture or production of goods or services for sale entered into pursuant to section 41-1622. All other procurement shall be as prescribed by this chapter.
- J. The state transportation board and the director of the department of transportation are exempt from this chapter other than sections 41-2517 and 41-2586 and are subject to title 28, chapter 20 and 2 Code of Federal Regulations section 200.317 for the procurement of the following:
1. All items of construction, reconstruction, rehabilitation, preservation or improvement undertaken on highway infrastructure.
 2. Engineering services and any other work or activity to carry out engineering services related to highway infrastructure.
 3. Right-of-way services related to land titles, appraisals, real property acquisitions, relocation services, property management and facility design.

4. Any other construction, reconstruction, rehabilitation, preservation or improvement work or activity that is required pursuant to title 28, chapter 20.

K. The Arizona highways magazine is exempt from this chapter for contracts for the production, promotion, distribution and sale of the magazine and related products and for contracts for sole source creative works entered into pursuant to section 28-7314, subsection A, paragraph 5. All other procurement shall be as prescribed by this chapter.

L. The secretary of state is exempt from this chapter for contracts entered into pursuant to section 41-1012 to publish and sell the administrative code. All other procurement shall be as prescribed by this chapter.

M. This chapter is not applicable to contracts for professional witnesses if the purpose of such contracts is to provide for professional services or testimony relating to an existing or probable judicial proceeding in which this state is or may become a party or to contract for special investigative services for law enforcement purposes.

N. The head of any state governmental unit, in relation to any contract exempted by this section from this chapter, has the same authority to adopt rules, procedures or policies as is delegated to the director pursuant to this chapter.

O. Agreements negotiated by legal counsel representing this state in settlement of litigation or threatened litigation are exempt from this chapter.

P. This chapter is not applicable to contracts entered into by the department of economic security:

1. With a provider licensed or certified by an agency of this state to provide child day care services.
2. With area agencies on aging created pursuant to the older Americans act of 1965 (P.L. 89-73; 79 Stat. 218; 42 United States Code sections 3001 through 3058ff).
3. For services pursuant to title 36, chapter 29, article 2.
4. With an eligible entity as defined by Public Law 105-285, section 673(1)(A)(i), as amended, for designated community services block grant program monies and any other monies given to the eligible entity that accomplishes the purpose of Public Law 105-285, section 672.

Q. The Arizona health care cost containment system may not require that persons with whom it contracts follow this chapter for the purposes of subcontracts entered into for the provision of the following:

1. Mental health services pursuant to section 36-189, subsection B.
2. Services for the seriously mentally ill pursuant to title 36, chapter 5, article 10.
3. Drug and alcohol services pursuant to section 36-141.

R. The department of health services may not require that persons with whom it contracts follow this chapter for the purpose of subcontracts entered into for the provision of domestic violence services pursuant to title 36, chapter 30, article 1.

S. The department of health services is exempt from this chapter for contracts for services of physicians at the Arizona state hospital.

T. Contracts for goods and services approved by the board of trustees of the public safety personnel retirement system are exempt from this chapter.

U. The Arizona department of agriculture is exempt from this chapter with respect to contracts for private labor and equipment to effect cotton or cotton stubble plow-up pursuant to rules adopted under title 3, chapter 2,

article 1.

V. The Arizona state parks board is exempt from this chapter for purchases of guest supplies and items for resale such as food, linens, gift items, sundries, furniture, china, glassware and utensils for the facilities located in the Tonto natural bridge state park.

W. The Arizona state parks board is exempt from this chapter for the purchase, production, promotion, distribution and sale of publications, souvenirs and sundry items obtained and produced for resale.

X. The Arizona state schools for the deaf and the blind are exempt from this chapter for the purchase of textbooks and when purchasing products through a cooperative that is organized and operates in accordance with state law if such products are not available on a statewide contract and are related to the operation of the schools or are products for which special discounts are offered for educational institutions.

Y. Expenditures of monies in the morale, welfare and recreational fund established by section 26-153 are exempt from this chapter.

Z. Notwithstanding section 41-2534, the director of the state department of corrections may contract with local medical providers in counties with a population of less than four hundred thousand persons for the following purposes:

1. To acquire hospital and professional medical services for inmates who are incarcerated in state department of corrections facilities that are located in those counties.
2. To ensure the availability of emergency medical services to inmates in all counties by contracting with the closest medical facility that offers emergency treatment and stabilization.

AA. The department of environmental quality is exempt from this chapter for contracting for procurements relating to the water quality assurance revolving fund program established pursuant to title 49, chapter 2, article 5. The department shall engage in a source selection process that is similar to the procedures prescribed by this chapter. The department may contract for remedial actions with a single selection process. The exclusive remedy for disputes or claims relating to contracting pursuant to this subsection is as prescribed by article 9 of this chapter and the rules adopted pursuant to that article. All other procurement by the department shall be as prescribed by this chapter.

BB. The motor vehicle division of the department of transportation is exempt from this chapter for third-party authorizations pursuant to title 28, chapter 13, only if all of the following conditions exist:

1. The division does not pay any public monies to an authorized third party.
2. Exclusivity is not granted to an authorized third party.
3. The director has complied with the requirements prescribed in title 28, chapter 13 in selecting an authorized third party.

CC. This section does not exempt third-party authorizations pursuant to title 28, chapter 13 from any other applicable law.

DD. The state forester is exempt from this chapter for purchases and contracts relating to wildland fire suppression and pre-positioning equipment resources and for other activities related to combating wildland fires and other unplanned risk activities, including fire, flood, earthquake, wind and hazardous material responses. All other procurement by the state forester shall be as prescribed by this chapter.

EE. The cotton research and protection council is exempt from this chapter for procurements.

FF. The Arizona commerce authority is exempt from this chapter, except article 10 for the purpose of cooperative purchases. The authority shall adopt policies, procedures and practices, in consultation with the department of administration, that are similar to and based on the policies and procedures prescribed by this chapter for the purpose of increased public confidence, fair and equitable treatment of all persons engaged in the process and fostering broad competition while accomplishing flexibility to achieve the authority's statutory requirements. The authority shall make its policies, procedures and practices available to the public. The authority may exempt specific expenditures from the policies, procedures and practices.

GG. The Arizona exposition and state fair board is exempt from this chapter for contracts for professional entertainment.

HH. This chapter does not apply to the purchase of water, gas or electric utilities.

II. This chapter does not apply to professional certifications, professional memberships and conference registrations.

JJ. The department of gaming is exempt from this chapter for problem gambling treatment services contracts with licensed behavioral health professionals.

KK. This chapter does not apply to contracts for credit reporting services.

LL. This chapter does not apply to contracts entered into by the department of child safety:

1. With a provider of family foster care pursuant to section 8-503.
2. With an eligible entity as defined by Public Law 105-285, section 673(1)(A)(i), as amended, for designated community services block grant program monies and any other monies given to the eligible entity that accomplishes the purpose of Public Law 105-285, section 672.
3. For services pursuant to title 36, chapter 29, article 1 and as set forth in the approved medicaid state plan.

MM. This chapter does not apply to contracts entered into by the department of economic security with a financial institution to serve as a program manager and depository under section 46-903.

41-2502. Determinations

Written determinations required by this chapter shall be retained in the appropriate official records file of the director.

41-2503. Definitions

In this chapter, unless the context otherwise requires:

1. "Architect services" means those professional architect services that are within the scope of architectural practice as provided in title 32, chapter 1.
2. "Business" means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture or other private legal entity.
3. "Change order" means a written order that is signed by a procurement officer and that directs the contractor to make changes that the changes clause of the contract authorizes the procurement officer to order.
4. "Construction":
 - (a) Means the process of building, altering, repairing, improving or demolishing any public structure or building or other public improvements of any kind to any public real property.
 - (b) Does not include:
 - (i) The routine operation, routine repair or routine maintenance of existing facilities, structures, buildings or real property.
 - (ii) The investigation, characterization, restoration or remediation due to an environmental issue of existing facilities, structures, buildings or real property.
5. "Construction-manager-at-risk" means a project delivery method in which:
 - (a) There is a separate contract for design services and a separate contract for construction services, except that instead of a single contract for construction services, the purchasing agency may elect separate contracts for preconstruction services during the design phase, for construction during the construction phase and for any other construction services.
 - (b) The contract for construction services may be entered into at the same time as the contract for design services or at a later time.
 - (c) Design and construction of the project may be either:
 - (i) Sequential with the entire design complete before construction commences.
 - (ii) Concurrent with the design produced in two or more phases and construction of some phases commencing before the entire design is complete.
 - (d) Finance services, maintenance services, operations services, preconstruction services and other related services may be included.
6. "Construction services" means either of the following for construction-manager-at-risk, design-build and job-order-contracting project delivery methods:
 - (a) Construction, excluding services, through the construction-manager-at-risk or job-order-contracting project delivery methods.
 - (b) A combination of construction and, as elected by the purchasing agency, one or more related services, such as finance services, maintenance services, operations services, design services and preconstruction services, as those services are authorized in the definitions of construction-manager-at-risk, design-build or job-order-contracting in this section.

7. "Contract" means all types of state agreements, regardless of what they may be called, for the procurement of materials, services, construction, construction services or the disposal of materials.
8. "Contract modification" means any written alteration in the terms and conditions of any contract accomplished by mutual action of the parties to the contract.
9. "Contractor" means any person who has a contract with a state governmental unit.
10. "Data" means documented information, regardless of form or characteristic.
11. "Department" means the department of administration.
12. "Design-bid-build" means a project delivery method in which:
 - (a) There is a sequential award of two separate contracts.
 - (b) The first contract is for design services.
 - (c) The second contract is for construction.
 - (d) Design and construction of the project are in sequential phases.
 - (e) Finance services, maintenance services and operations services are not included.
13. "Design-build" means a project delivery method in which:
 - (a) There is a single contract for design services and construction services, except that instead of a single contract for design services and construction services, the purchasing agency may elect separate contracts for preconstruction services and design services during the design phase, for construction and design services during the construction phase and for any other construction services.
 - (b) Design and construction of the project may be either:
 - (i) Sequential with the entire design complete before construction commences.
 - (ii) Concurrent with the design produced in two or more phases and construction of some phases commencing before the entire design is complete.
 - (c) Finance services, maintenance services, operations services, preconstruction services and other related services may be included.
14. "Design professional" means an individual or firm that is registered by the state board of technical registration pursuant to title 32, chapter 1 to practice architecture, engineering, geology, landscape architecture or land surveying or any combination of those professions and any person employed by the registered individual or firm.
15. "Design requirements":
 - (a) Means at a minimum the purchasing agency's written description of the project or service to be procured, including:
 - (i) The required features, functions, characteristics, qualities and properties.
 - (ii) The anticipated schedule, including start, duration and completion.

(iii) The estimated budgets applicable to the specific procurement for design and construction and, if applicable, for operation and maintenance.

(b) May include:

(i) Drawings and other documents illustrating the scale and relationship of the features, functions and characteristics of the project, which shall all be prepared by a design professional who is registered pursuant to section 32-121.

(ii) Additional design information or documents that the purchasing agency elects to include.

16. "Design services" means architect services, engineer services or landscape architect services.

17. "Designee" means a duly authorized representative of the director.

18. "Director" means the director of the department of administration.

19. "Employee" means an individual drawing a salary from a state governmental unit, whether elected or not, and any noncompensated individual performing personal services for any state governmental unit.

20. "Engineer services" means those professional engineer services that are within the scope of engineering practice as provided in title 32, chapter 1.

21. "Finance services" means financing for a construction services project.

22. "General services administration contract" means contracts awarded by the United States government general services administration.

23. "Grant" means the furnishing of financial or other assistance, including state funds or federal grant funds, by any state governmental unit to any person for the purpose of supporting or stimulating educational, cultural, social or economic quality of life.

24. "Job-order-contracting" means a project delivery method in which:

(a) The contract is a requirements contract for indefinite quantities of construction.

(b) The construction to be performed is specified in job orders issued during the contract.

(c) Finance services, maintenance services, operations services, preconstruction services, design services and other related services may be included.

25. "Landscape architect services" means those professional landscape architect services that are within the scope of landscape architectural practice as provided in title 32, chapter 1.

26. "Maintenance services" means routine maintenance, repair and replacement of existing facilities, structures, buildings or real property.

27. "Materials":

(a) Means all property, including equipment, supplies, printing, insurance and leases of property.

(b) Does not include land, a permanent interest in land or real property or leasing space.

28. "Operations services" means routine operation of existing facilities, structures, buildings or real property.

29. "Owner" means a state purchasing agency or state governmental unit.

30. "Person" means any corporation, business, individual, union, committee, club, other organization or group of individuals.

31. "Preconstruction services" means services and other activities during the design phase.

32. "Procurement":

(a) Means buying, purchasing, renting, leasing or otherwise acquiring any materials, services, construction or construction services.

(b) Includes all functions that pertain to obtaining any materials, services, construction or construction services, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.

33. "Procurement officer":

(a) Means any person duly authorized to enter into and administer contracts and make written determinations with respect to the contracts.

(b) Includes an authorized representative acting within the limits of the authorized representative's authority.

34. "Purchasing agency" means any state governmental unit that is authorized by this chapter or rules adopted pursuant to this chapter, or by way of delegation from the director, to enter into contracts.

35. "Services":

(a) Means the furnishing of labor, time or effort by a contractor or subcontractor that does not involve the delivery of a specific end product other than required reports and performance.

(b) Does not include employment agreements or collective bargaining agreements.

36. "Significant procurement role":

(a) Means any role that includes any of the following duties:

(i) Participating in the development of a procurement.

(ii) Participating in the development of an evaluation tool.

(iii) Approving a procurement or an evaluation tool.

(iv) Soliciting quotes greater than ten thousand dollars for the provision of materials, services or construction.

(v) Serving as a technical advisor or an evaluator who evaluates a procurement.

(vi) Recommending or selecting a vendor that will provide materials, services or construction to this state.

(vii) Serving as a decision maker or designee on a protest or an appeal by a party regarding an agency procurement selection or decision.

(b) Does not include making decisions on developing specifications and the scope of work for a procurement if the decision is based on the application of commonly accepted industry standards or known published standards of the agency as applied to the project, services, goods or materials.

37. "State governmental unit" means any department, commission, council, board, bureau, committee, institution, agency, government corporation or other establishment or official of the executive branch or

corporation commission of this state.

38. "Subcontractor" means a person who contracts to perform work or render service to a contractor or to another subcontractor as a part of a contract with a state governmental unit.

39. "Using agency" means any state governmental unit that uses any materials, services or construction procured under this chapter.

41-2504. Supplementary general principles of law applicable

Unless displaced by the particular provisions of this chapter, the principles of law and equity, including the uniform commercial code of this state, the common law of contracts as applied in this state and law relative to agency, fraud, misrepresentation, duress, coercion and mistake supplement the provisions of this chapter.

41-2511. Authority of the director

- A. Except as otherwise provided in this chapter, the director may adopt rules, consistent with this chapter, governing the procurement and management of all materials, services and construction to be procured by this state and the disposal of materials.
- B. The director shall serve as the central procurement officer of this state.
- C. Except as otherwise provided in this chapter, the director shall, in accordance with rules adopted under this chapter:
1. Procure or supervise the procurement of all materials, services and construction needed by this state.
 2. Establish guidelines for the management of all inventories of materials belonging to this state.
 3. Sell, trade or otherwise dispose of surplus materials belonging to this state.
 4. Establish and maintain programs for the inspection, testing and acceptance of materials, services and construction.
 5. Establish and maintain programs to ensure procurement compliance with this chapter and applicable rules.
 6. Establish and maintain a mandatory procurement training and certification program to ensure consistency in procurement practices for those authorized to perform procurement functions under this chapter.
 7. Employ staff as necessary to perform the duties prescribed in this chapter.
 8. Establish procurement offices as the director determines necessary to maintain an effective and efficient program of procurement administration.
 9. Provide consultation to state agency management in all aspects of procurement to increase efficiency and economy in state agencies by improving the methods of procurement with full recognition of the requirements and needs of management.
 10. Enter into agreements with any state government unit or political subdivision of this state or agency of a political subdivision of this state to furnish procurement administration services and facilities of the department. Unless monies have been appropriated by the legislature for this purpose, any agreement shall provide for reimbursement to this state of the actual cost of the services and facilities furnished, as determined by the director.
 11. Enter into agreements with the attorney general for dedicated legal resources to support any state governmental unit in procurement legal matters, including negotiations, protests and appeals.

41-2512. Delegation of authority or functions by the director

The director may delegate authority or specific procurement functions to any state governmental unit.

DEPARTMENT OF ENVIRONMENTAL QUALITY

Title 18, Chapter 2, Articles 14, 15, and 17, Department of Environmental Quality - Air Pollution Control



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: November 2, 2021

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

FROM: Council Staff

DATE: October 7, 2021

SUBJECT: DEPARTMENT OF ENVIRONMENTAL QUALITY
Title 18, Chapter 2, Department of Environmental Quality - Air Pollution Control,
Article 14 - Conformity Determinations, Article 15 - Forest and Range
Management Burns

Summary

This Five-Year Review Report (5YRR) from the Department of Environmental Quality (Department) relates to rules in Title 18, Chapter 2, Articles 14 and Article 15 related to the Department of Environmental Quality - Air Pollution Control.

The Articles address the following:

- **Article 14: Conformity Determinations**
- **Article 15: Forest and Range Management Burns**

Proposed Action

For each Article under review, the Department indicated the following.

- **Article 14:** For Article 14, the Department indicates the following:
 - **Sections R18-2-1401, R18-2-1402, R18-2-1405, R18-2-1430, and R18-2-1433:**
In the 2016 5YRR, the Department intended to significantly restructure Article 14

by amending these rules and re-evaluating other rules in Article 14 for possible repeal in the future. Specifically, the Department mentioned that R18-2-1405 needed to be amended to meet federal requirements that have changed over the years. R18-2-1430 needed to be amended to ensure consistency with 40 C.F.R. 51.390 and with the language in 40 C.F.R. 93.122(a)(4)(ii), as well as, to clarify the regional conformity determination process. Also, R18-2-1433 needed to be amended to ensure consistency with 40 C.F.R. 51.390 and with language in 40 C.F.R. 93.125(c), as well as, to clarify the conformity determination process. The department indicated it would keep some version of these rules to comply with federal requirements.

After the Council's approval of the 2016 5YRR, the Governor's Office approved the Department's request to initiate a rulemaking under Article 14 on January 12, 2017. However, the Department's submission of a final rulemaking was delayed due to significant involvement of affected stakeholders during the rule design and drafting phases and the 2018-1019 federal government shutdown. Because stakeholders' concerns were not sufficiently addressed, the Secretary of State stopped publication of the Notice of Proposed Rulemaking per the Department's request.

In this 5YRR, the Department plans to submit a Notice of Final Proposed Rulemaking (NFPR) to the Secretary of State's Office by February 28, 2022 after re-engaging with stakeholders to address their concerns. The Department states that it has already begun re-engaging with stakeholders such as the U.S. Environmental Protection Agency (EPA), Arizona Department of Transportation (ADOT), and Metropolitan Planning Organizations (MPO). **The Department anticipates that the rulemaking will be submitted to GRRC by June 2022.**

- **Article 15:** For article 15, the Department indicates the following:
 - **Sections R18-2-1501, R18-2-1503, R18-2-1506, R18-2-1510, R18-2-1511, and R18-2-1513:** In the 2016 5YRR, the Department intended to amend these rules for clarity as some of the terminology is out of date. Specifically, terminology such as "wildland fire use," that is used in these rules, is no longer used as a fire management technique. To leave this terminology in the rule implies that in part, the Department declares or announces wildfires, which is really a forest service duty.
 - **Section R18-2-1504:** In the 2016 5YRR, the Department indicated that this rules requirement that land managers model smoke impacts two or more weeks in advance of a burn is too far ahead of time to yield accurate results. The Department mentioned that they evaluate planned burns 24-48 hours prior to the burns as needed, and thus until the rule is amended, intended to model each burn on a case by case basis.
 - **Section R18-2-1507:** In the 2016 5YRR, the Department stated that it is not beneficial to collect wildfire information as there are more effective ways for the

public to be aware of wildfire activity. The Department indicated that this subsection of this rule should be removed when the rule is amended.

- **Section R18-2-1508:** With regards to this section, the Department indicated in the 2016 5YRR that the fire management technique forming the basis of this rule is obsolete. Thus, the Department proposed that this rule be repealed and removed from the state implementation plan (SIP) when the other rules are amended to avoid state-federal enforceability dissonance.

In the 2016 5YRR, the Department mentioned that some of the Article 15 rules may be subject to additional changes given the expectation of a new regional haze rule. Such additional changes are no longer necessary to maintain consistency with federal regional haze requirements.

In this 5YRR, the Department indicates that the proposed revisions to Article 15 have not been completed because its resources have been allocated to activities of higher priority to cope with the wildfire season. The Department mentions that improving and modernizing the Article 15 rules will help reduce the wildfire threats in Arizona. Thus, the Department submitted an exemption request to the Governor's Office on August 23, 2021, requesting permission to update and clarify rules in Article 15 to reflect the current state of science and technology. In addition to improving the rules, the Department plans to review and implement the 2016 5YRR proposed revisions to Article 15 if still applicable. **If the exemption request is approved by the Governor's Office, the Department expects to submit this rulemaking to GRRC in August of 2022.**

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

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

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

With respect to Article 14 Conformity Determinations, ADEQ described probable economic impacts in qualitative and quantitative terms in the economic impact statement (EIS) prepared when it developed these rules in 1994. ADEQ believes that the qualitative assessment of the economic impacts of the Article 14 rules remains accurate. With respect to the quantitative assessment, population growth and urban sprawl have likely increased transportation conformity planning activities and associated costs. Government agencies such as certified metropolitan planning organizations, the Arizona Department of Transportation (ADOT), and ADEQ continue to bear such costs. While ADEQ supplemented the federal requirements with respect to consultation procedures as authorized by A.R.S. § 49-408(B), the majority of costs associated with transportation conformity are ultimately attributed to federal - as opposed to state - rules. ADEQ believes that the Article's impact on the state's economy, small business, and consumers has not changed since the rules became effective on June 15, 1995.

With respect to Article 15 Forest and Range Management Burns, ADEQ described probable economic impacts in qualitative and quantitative terms in the EIS prepared when it amended these rules in 2004. The revisions to Article 15 were anticipated to result in minimal economic impact to ADEQ, Federal/State Land Managers such as the U.S. Forest Service, National Park Service, Bureau of Land Management, U.S. Fish and Wildlife, and Arizona State Land Department, and entities that may voluntarily comply with the rules such as the Bureau of Indian Affairs. Benefits were anticipated to accrue to the public, including reduced risk for wildfire, i.e. protection of property and state resources, and improved air quality, as a result of improvements to Arizona's smoke management program. ADEQ believes that the Article's impact on the state's economy, small business, and consumers has not changed since the rules became effective on February 6, 2004.

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?**

ADEQ believes that these rules impose the least burden and costs to regulated persons, including paperwork and other compliance costs, necessary to achieve the underlying regulatory and statutory objective.

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

 No. The Department indicates it received no written criticisms of the rules in the last five years.

5. **Has the agency analyzed the rules' clarity, conciseness, and understandability?**

The Department indicates the rules are generally clear, concise, and understandable except as to the following rules in Article 15:

- **R18-2-1501 and R18-2-1508**: The Department indicates that the phrase "wildland fire use" is no longer used by the National Wildfire Coordinating Group (NWCG), a provider of national leadership to enable interoperable wildland fire operation among federal, state, local, tribal, and territorial partners. Therefore, such terminology is antiquated and possibly confusing. If the requested Article 15 rulemaking is approved by the Governor's Office, the Department intends to gather ideas from stakeholders on how to improve these rules.
- **R18-2-1512**: Also, the Department mentions that the phrase "Prescribed Fire Boss" is also no longer used by NWCG and therefore is antiquated and possibly confusing. If the requested Article 15 rulemaking is approved by the Governor's Office, the Department intends to gather ideas from stakeholders on how to improve this rules.

6. **Has the agency analyzed the rules' consistency with other rules and statutes?**

The Department indicates that the rules are generally consistent with other rules and statutes, except the rules in Article 14 are not consistent with the current federal transportation conformity rule. *See* 73 Fed. Reg. 4,419 (Jan. 24, 2008). However, in Section 12 of the Preamble, the Department states that if the rulemaking request for Article 14 is approved, it will create consistency between the state and federal transportation conformity rules.

7. **Has the agency analyzed the rules' effectiveness in achieving its objectives?**

The Department indicates that the rules are generally effective in achieving their objectives, except as to the following rules:

- **Article 14**

- **Sections R18- 2-1402 through 1436, and R-18-2-1438**: The effectiveness of the rules in Article 14 is impacted by their inconsistencies with the current federal transportation conformity rule. The Department plans to submit this rulemaking to GRRC by June 2022 in order to repeal outdated rules and to improve the remaining federally required rules.

- **Article 15**

- **Section R18-2-1504**: This requirement under this rule that revisions to the Burn Plan be submitted no later than 14 days before the date on which the federal land manager or a state land manager (F/SLM) requests permission to burn is not effective. The Department indicates that this is not effective because it does not facilitate the broader objective of smoke management under Article 15, nor does it allow for F/SLM or the Department to take advantage of current meteorological conditions. The Department intends to complete the proposed course of action from the 2016 5YRR by amending the timeframe.
- **Section R18-2-1505**: Similarly, the timeframes for submittal (C) and authorization (D) of Daily Burn Requests is not effective because it does not facilitate smoke management and does not allow F/SLM and the Department to take advantage of current meteorological conditions.
- **R18-2-1507**: The requirement that Burn Accomplishments be submitted by 2:00 pm on the business day following the approved burn is not effective because it does not facilitate smoke management. Also, this timeframe does not allow sufficient time for accurate reporting, including acreage accomplishments. Therefore, the Department intends to remove this rule by submitting a rulemaking to GRRC in August 2022.
- **R18-2-1508**: The terminology of “wildland fire use” in this rule is antiquated because the NWCG recognizes two types of fire: prescribed fire and wildfire.

Consequently, this rule is no longer functional and the Department intends to remove this rule by submitting a rulemaking to GRRC in August 2022.

8. Has the agency analyzed the current enforcement status of the rules?

The Department indicates that the rules are generally enforced as written, except as to the following rules:

● **Article 14**

- **R18-2-1403**: This rule does not comply with the current federal transportation conformity rule and therefore is not enforced because it would be more stringent than what the federal law requires. The Department proposes amending the rule to implement 40 C.F.R. § 93.122(a)(4)(ii) requirements that written commitments to control measures be obtained prior to a conformity determination if the control measures are not included in a metropolitan planning organization's (MPO's) transportation plan and TIP, and that such commitments be fulfilled.
- **R18-2-1404**: This rule does not comply with the current federal transportation conformity rule and therefore is not enforced because it would be more stringent than what the federal law requires. The Department proposes amending this rule to implement the 40 C.F.R. § 93.125(c) requirement that written commitments to mitigation measures be obtained prior to project-level conformity determination, and that project sponsors comply with such commitments.
- **R18-2-1406**: This rule does not comply with the current federal transportation conformity rule and therefore is not enforced because it would be more stringent than what the federal law requires. The Department first proposes repealing the current R18-2-1406 and amending the text from R18-2-1438 that was adopted in 1993. This amendment would update the rule's reference to EPA's final rule modifying 40 C.F.R. 93(B) - Determining Conformity of General Federal Actions to State or Federal Implementation Plans.
- **R18-2-1407 through 1436**: These rules do not comply with the current federal transportation conformity rule and therefore are not enforced because they would be more stringent than what the federal law requires. Therefore, the Department proposes repealing these rules.

● **Article 15**

- **R18-2-1504**: This rule is not effective nor enforced as written because the allotted time frame for submitting revisions to the Burn Plan does not facilitate smoke management. Therefore, if the requested rulemaking is approved by the Governor's Office, the Department plans to conduct a robust stakeholder process to address concerns and gather ideas for improvement.

- **R18-2-1507**: This rule is not enforced as written because the Department does not require F/SLM wildfire reporting as there are more accurate methods of obtaining that information. Therefore, if the requested rulemaking is approved by the Governor's Office, the Department plans to conduct a robust stakeholder process to address concerns and gather ideas for improvement.
- **R18-2-1508**: This rule is not enforced as written because it uses antiquated terminology no longer functional given changes by the NWCG. Therefore, if the requested rulemaking is approved by the Governor's Office, the Department plans to conduct a robust stakeholder process to address concerns and gather ideas for improvement.
- **R18-2-1512**: This rule is not enforced as written because the Department's approved smoke management workshops are no longer an option to satisfy requirement (B)(2) because the NWCG offers comprehensive training courses. Therefore, if the requested rulemaking is approved by the Governor's Office, the Department plans to conduct a robust stakeholder process to address concerns and gather ideas for improvement.
- **R18-2-1515**: This rule is not enforced as written because the Department offers the required forms electronically because they are no longer available in paper format (A). Therefore, if the requested rulemaking is approved by the Governor's Office, the Department plans to conduct a robust stakeholder process to address concerns and gather ideas for improvement.

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

No, except for some of the rules in Article 14, the rules are not more stringent than corresponding federal laws. In Article 14, Sections R18-2-1403, R18-2-1404, and R18-2-1406 through R18-2-1436 are more stringent than federal laws. The rulemaking request submitted to the Governor's Office on August 23, 2021, will create consistency between state and federal transportation conformity rules and the rules will no longer be more stringent than corresponding federal laws.

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

No. This section is not applicable to this 5YRR because the Article 14 rules were adopted in 1995 and the Article 15 rules were adopted in 1996.

11. Conclusion

This 5YRR from the Department of Environmental Quality related to rules in Title 18, Chapter 2, Article 14 relating to conformity determinations and Article 15 relating to forest and range management burns. The Department indicates that the rules are generally clear,

concise, understandable, consistent, effective and enforced, except as related to several rules outlined above.

The Department affirms that it is actively engaged in a rulemaking for Article 14 to address issues with clarity, conciseness, understandability, consistency, effectiveness, and enforcement. Specifically, the Department mentions that it is re-engaging with stakeholders to address concerns and anticipates submitting a NFPR to the Secretary of State by February 28, 2022. Also, the Department intends to amend and repeal rules in order to comply with current federal rules. The Department plans to submit this rulemaking to GRRC in June of 2022.

The Department also indicates that it submitted an exemption request to the Governor's Office on August 23, 2021, requesting permission to update and clarify the rules in Article 15 to reflect the current state of science and technology. In addition, the Department states that it will be fulfilling its 2016 5YRR promise to GRCC to improve outdated rules. If the exemption request is approved by the Governor's Office, the Department plans to submit the rulemaking to GRRC in August of 2022.

Council staff finds that the Department completed an adequate analysis of the rules pursuant to A.R.S. § 41-1056(A). Council staff notes that the Department has already requested approval from the Governor's office to conduct a rulemaking for Articles 14 and 15 to address the issues identified in this 5YRR. Council staff recommends approval of this report.



Douglas A. Ducey
Governor

ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY



Misael Cabrera
Director

Aug 27, 2021

SENT VIA EMAIL ONLY

Nicole Sornsin, Chair
Governor's Regulatory Review Council
100 N. 15th Ave., #305
Phoenix, AZ 85007
grrc@azdoa.gov

Re: Submittal of Five-Year Review Report for A.A.C. Title 18, Chapter 2, Articles 14, 15, and 17

Dear Chair Sornsin:

I am pleased to submit to you, pursuant to A.R.S. § 41-1056 and A.A.C. R1-6-301, our agency's Five-Year Review Report for A.A.C. Title 18, Chapter 2, Article 14 (Conformity Determinations), Article 15 (Forest and Range Management Burns), and Article 17 (Expired).¹

Pursuant to A.R.S. § 41-1056(A), I certify that ADEQ is in compliance with A.R.S. § 41-1091 requirements for filing of notices of substantive policy statements and annual publication of a substantive policy statement directory.

Please contact Tiffany Andersen in the Office of Administrative Counsel at 602-771-2375, or andersen.tiffany@azdeq.gov, if you have any questions.

Sincerely,

Misael Cabrera, P.E.
Director

Enclosure

¹ The rules contained in Article 17 have expired pursuant to A.R.S. § 41-1056(J) and, therefore, are not reviewed in this Five-Year Review Report. See 23 A.A.R. 2, 135-36 (Jan. 13, 2017).

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Arizona Department of Environmental Quality
Five-Year-Review Report
Title 18. Environmental Quality
Chapter 2. Department of Environmental Quality - Air Pollution Control
Article 14. Conformity Determinations
Article 15. Forest and Range Management Burns
Article 17. Expired¹
August 27, 2021

1. Authorization of the rule by existing statutes

Article 14. Conformity Determinations

General Statutory Authority: A.R.S. §§ 49-104(A)(1), (10), 49-404(A), A.R.S. § 49-425(A)

Specific Statutory Authority: A.R.S. § 49-408

Article 15. Forest and Range Management Burns

General Statutory Authority: A.R.S. §§ 49-104(A)(1), (10), 49-404(A), 49-425(A)

Specific Statutory Authority: A.R.S. §§ 49-458, 49-458.01

2. The objective of each rule:

Rule	Objective
Article 14. Conformity Determinations	These rules are necessary to comply with Clean Air Act (CAA) § 176(c)(4), which requires that each state include criteria and procedures for determining conformity in its state implementation plan (SIP). Conformity means that federally funded or supported plans, programs, and projects must conform to, or be consistent with, a SIP's purpose of eliminating or reducing violations of the National Ambient Air Quality Standards (NAAQS) and achieving expeditious attainment of such standards. Article 14 includes conformity rules for (1) transportation plans, programs, and projects funded or approved by the Federal Highway Administration (FHWA) or the Federal Transit Administration (FTA) or recipients of funds from these organizations in R18-2-1401 through 1437 (Transportation Conformity Rules), and (2) all other federally funded or supported projects in R18-2-1438 (General Conformity Rule).
R18-2-1401	This rule provides definitions for terms used in Article 14.
R18-2-1402	This rule outlines applicability, including actions, areas, and pollutants requiring conformity determinations.
R18-2-1403	This rule requires that, when assisting or approving any action with air quality-related consequences, federal agencies must give priority to the implementation of those transportation portions of an applicable implementation plan.
R18-2-1404	This rule outlines the frequency of conformity determinations for transportation plans and projects.
R18-2-1405	This rule describes the consultation process to be used in preparing for and making conformity determinations and in developing applicable implementation plans.

¹ The rules contained in Article 17 have expired pursuant to A.R.S. § 41-1056(J) and, therefore, are not reviewed in this Report. See 23 A.A.R. 2, 135-36 (Jan. 13, 2017).

R18-2-1406	This rule sets forth supplemental content requirements for transportation plans related to the transportation system envisioned for certain future years (“horizon years”).
R18-2-1407	This rule outlines the relationship of transportation plan conformity with the National Environmental Protection Act (NEPA) process.
R18-2-1408	This rule requires that transportation plans demonstrate fiscal constraint.
R18-2-1409	This rule outlines the general criteria and procedures for determining conformity of transportation plans, programs, and projects.
R18-2-1410	This rule requires conformity determinations be based on the latest planning assumptions.
R18-2-1411	This rule requires conformity determinations be based on the latest emission estimation model available.
R18-2-1412	This rule requires conformity determinations be made in accordance with the consultation procedures in R18-2-1405.
R18-2-1413	This rule requires that transportation plans and transportation improvement programs (TIPs), as well as FHWA or FTA projects, which are not from a conforming plan, provide for the timely implementation of the transportation control measures (TCMs) in the applicable implementation plan.
R18-2-1414	This rule requires that there be a currently conforming transportation plan and currently conforming TIP at the time of project approval.
R18-2-1415	This rule requires that projects come from a conforming transportation plan and program.
R18-2-1416	This rule requires that FHWA or FTA projects not cause or contribute to any new localized CO or PM10 violations or increase the frequency or severity of any existing CO or PM10 violations in CO and PM10 nonattainment and maintenance areas.
R18-2-1417	This rule requires that the FHWA or FTA project comply with PM10 control measures in the applicable implementation plan.
R18-2-1418	This rule requires that the transportation plan be consistent with each motor vehicle emissions budget in the applicable implementation plan or implementation plan submission.
R18-2-1419	This rule requires that the TIP be consistent with the motor vehicle emissions budgets in the applicable implementation plan or implementation plan submission.
R18-2-1420	This rule requires that projects that are not from a conforming transportation plan and conforming TIP be consistent with each motor vehicle emissions budget in the applicable implementation plan or implementation plan submission.
R18-2-1421	This rule requires that FHWA or FTA projects eliminate or reduce the severity and number of localized CO violations in the area substantially affected by the project (in CO nonattainment areas).
R18-2-1422	This rule requires that transportation plans contribute to emissions reductions in ozone and CO nonattainment areas.
R18-2-1423	This rule requires that TIPs contribute to emissions reductions in ozone and CO nonattainment areas.
R18-2-1424	This rule requires that projects that are not from a conforming transportation plan and TIP must contribute to emissions reductions in ozone and CO nonattainment areas.
R18-2-1425	This rule requires that transportation plans contribute to emission reductions or not increase emissions in PM10 and NO2 nonattainment areas.
R18-2-1426	This rule requires that TIPs contribute to emission reductions or not increase emissions in PM10 and NO2 nonattainment areas.

R18-2-1427	This rule requires that projects that are not from a conforming transportation plan and TIP contribute to emission reductions or not increase emissions in PM10 and NO2 nonattainment areas.
R18-2-1428	This rule describes the conformity determination requirements for transition from the interim period to the control strategy period.
R18-2-1429	This rule outlines requirements for adoption or approval of projects by recipients of federal funds designated under 23 U.S.C. or the Federal Transit Act.
R18-2-1430	This rule sets forth procedures for determining regional transportation-related emissions.
R18-2-1431	This rule sets forth procedures for determining localized CO and PM10 concentrations (Hot-spot Analysis).
R18-2-1432	This rule describes how motor vehicle emissions budgets in implementation plans or implementation plan submissions may be used.
R18-2-1433	This rule requires enforceable written commitments for project-level mitigation and control measures be obtained before making conformity determinations.
R18-2-1434	This rule sets forth highway and transit projects that are exempt from conformity determinations.
R18-2-1435	This rule sets forth highway and transit projects that are exempt from regional emissions analysis requirements.
R18-2-1436	This rule outlines special requirements for nonattainment areas that are not required to demonstrate reasonable further progress and attainment.
R18-2-1437	Reserved
R18-2-1438	This rule establishes general conformity requirements via incorporation by reference of the federal general conformity rule: 58 FR 63253, Nov. 30, 1993.
Article 15. Forest and Range Management Burns	These rules are included in Arizona's certified enhanced smoke management program (SMP), which establishes a basic framework for managing smoke from prescribed fires on wildlands. The SMP is necessary to (1) prevent deterioration of air quality and exceedances of NAAQS, (2) address regional haze visibility impairment for mandatory federal class I areas, <i>e.g.</i> , Grand Canyon National Park, pursuant to the Regional Haze Rule; and (3) mitigate nuisance and public safety hazards posed by smoke intrusions into populated areas.
R18-2-1501	This rule provides definitions for terms used in Article 15.
R18-2-1502	This rule outlines applicability, including who is subject to the requirements of Article 15 as well as the areas to which it applies.
R18-2-1503	This rule requires that Federal/State Land Managers (F/SLMs) register planned burn projects annually with ADEQ. In addition, it requires that ADEQ hold an annual meeting with F/SLMs to evaluate the program and establish the annual emission goal. Lastly, this rule requires that ADEQ request long-term projections of fire use activity from F/SLMs to support planning for visibility impairment and assessment of other air quality concerns.
R18-2-1504	This rule requires that F/SLMs submit prescribed burn plans to ADEQ no later than 14 days before the date on which permission is requested to burn.
R18-2-1505	This rule requires that F/SLMs submit daily burn requests to ADEQ. It also precludes F/SLMs from igniting a prescribed burn without receiving ADEQ's approval.
R18-2-1506	This rule outlines the factors ADEQ uses to approve, approve with conditions, or disapprove a daily burn request.
R18-2-1507	This rule requires that F/SLMs submit a prescribed burn accomplishment to ADEQ the business day following the approved burn. In addition, it requires that ADEQ maintain records for five years. Lastly, this rule requires F/SLMs to report wildfire incidents to ADEQ.
R18-2-1508	This rule requires that F/SLMs notify ADEQ of wildland fire use incidents and subsequently submit a Wildland Fire Use Burn Plan to ADEQ, which ADEQ, in turn, is required to approve or

	disapprove. The rule further requires the F/SLMs submit a Daily Status Report for each wildland fire use incident to ADEQ. In addition, it requires FSLMs consult with ADEQ prior to initiating human-made ignition on the certain wildland fire use incidents. Lastly, the rule requires that F/SLMs ensure appropriate signage and notification to protect public safety on transportation corridors during a wildland fire use incident.
R18-2-1509	This rule describes Emission Reduction Techniques and requires F/SLMs conducting a prescribed burn to implement as many as are feasible.
R18-2-1510	This rule describes Smoke Management Techniques and requires F/SLMs conducting a prescribed burn to implement as many as are feasible.
R18-2-1511	This rule authorizes ADEQ to require F/SLMs to monitor air quality and weather before or during a prescribed burn or wildland fire use incident if necessary to predict or assess smoke impacts. In addition, it provides for reporting and recordkeeping requirements if monitoring is indeed required.
R18-2-1512	This rule requires that all burn projects be conducted by personnel trained in prescribed fire and smoke management techniques
R18-2-1513	This rule requires that ADEQ conduct a public education and awareness program to inform the general public of the Smoke Management Program. It also requires that ADEQ make burn information available to the public and facilitate regional coordination efforts and public notification.
R18-2-1514	This rule sets forth procedures to ensure compliance with Article 15, including on-ground site inspection and aerial surveillance of burn sites, audit of data and measurements from previously conducted burns, and penalties for violation.
R18-2-1515	This rule requires ADEQ to make forms available in both paper and electronic form. It also authorizes ADEQ to require F/SLMs provide data in a manner that facilitates electronic transfer of information.

3. **Are the rules effective in achieving their objectives?**

Yes No

The rules are effective except as indicated below.

Rule	Explanation
Article 14. Conformity Determinations	
R18-2-1402	The rule is not consistent with the current federal transportation conformity rule. <i>See 73 Fed. Reg. 4,419 (Jan. 24, 2008).</i>
R18-2-1403	The rule is not consistent with the current federal transportation conformity rule. <i>See 73 Fed. Reg. 4,419 (Jan. 24, 2008).</i>
R18-2-1404	The rule is not consistent with the current federal transportation conformity rule. <i>See 73 Fed. Reg. 4,419 (Jan. 24, 2008).</i>
R18-2-1405	The rule is not consistent with the current federal transportation conformity rule. <i>See 73 Fed. Reg. 4,419 (Jan. 24, 2008).</i>
R18-2-1406	The rule is not consistent with the current federal transportation conformity rule. <i>See 73 Fed. Reg. 4,419 (Jan. 24, 2008).</i>
R18-2-1407	The rule is not consistent with the current federal transportation conformity rule. <i>See 73 Fed. Reg. 4,419 (Jan. 24, 2008).</i>
R18-2-1408	The rule is not consistent with the current federal transportation conformity rule. <i>See 73 Fed. Reg. 4,419 (Jan. 24, 2008).</i>

R18-2-1432	The rule is not consistent with the current federal transportation conformity rule. <i>See</i> 73 Fed. Reg. 4,419 (Jan. 24, 2008).
R18-2-1433	The rule is not consistent with the current federal transportation conformity rule. <i>See</i> 73 Fed. Reg. 4,419 (Jan. 24, 2008).
R18-2-1434	The rule is not consistent with the current federal transportation conformity rule. <i>See</i> 73 Fed. Reg. 4,419 (Jan. 24, 2008).
R18-2-1435	The rule is not consistent with the current federal transportation conformity rule. <i>See</i> 73 Fed. Reg. 4,419 (Jan. 24, 2008).
R18-2-1436	The rule is not consistent with the current federal transportation conformity rule. <i>See</i> 73 Fed. Reg. 4,419 (Jan. 24, 2008).
R18-2-1438	The rule does not refer to the current federal general conformity rule. <i>See</i> 75 FR 17,278 (Apr. 5, 2010).
Article 15. Forest and Range Management Burns	
R18-2-1504	The requirement that revisions to the Burn Plan be submitted no later than 14 days before the date on which the F/SLM requests permission to burn is not effective because it doesn't facilitate the broader objective of Article 15, <i>i.e.</i> smoke management. Indeed, this timeframe doesn't allow F/SLMs to take advantage of current meteorological conditions.
R18-2-1505	Similarly, the timeframes for submittal (C) and authorization (D) of Daily Burn Requests is not effective because it doesn't facilitate smoke management. This timeframe doesn't allow F/SLMs and ADEQ to take advantage of current meteorological conditions.
R18-2-1507	The requirement that Burn Accomplishments be submitted by 2:00 p.m. of the business day following the approved burn is not effective because it doesn't facilitate smoke management. This timeframe does not allow sufficient time for accurate reporting, including acreage accomplishments.
R18-2-1508	This rule addresses "wildland fire use," which is antiquated terminology. The National Wildfire Coordinating Group (NWCG), which provides national leadership to enable interoperable wildland fire operations among federal, state, local, tribal, and territorial partners, currently recognizes two types of fire: prescribed fire and wildfire. Consequently, this rule is no longer functional.

4. **Are the rules consistent with other rules and statutes?** Yes No

Except as indicated below, the rules are consistent with other rules and statutes.

Rule	Explanation
Article 14. Conformity Determinations	
R18-2-1402	The rule is not consistent with the current federal transportation conformity rule. <i>See</i> 73 Fed. Reg. 4,419 (Jan. 24, 2008).
R18-2-1403	The rule is not consistent with the current federal transportation conformity rule. <i>See</i> 73 Fed. Reg. 4,419 (Jan. 24, 2008).
R18-2-1404	The rule is not consistent with the current federal transportation conformity rule. <i>See</i> 73 Fed. Reg. 4,419 (Jan. 24, 2008).
R18-2-1405	The rule is not consistent with the current federal transportation conformity rule. <i>See</i> 73 Fed. Reg. 4,419 (Jan. 24, 2008).

R18-2-1429	The rule is not consistent with the current federal transportation conformity rule. <i>See</i> 73 Fed. Reg. 4,419 (Jan. 24, 2008).
R18-2-1430	The rule is not consistent with the current federal transportation conformity rule. <i>See</i> 73 Fed. Reg. 4,419 (Jan. 24, 2008).
R18-2-1431	The rule is not consistent with the current federal transportation conformity rule. <i>See</i> 73 Fed. Reg. 4,419 (Jan. 24, 2008).
R18-2-1432	The rule is not consistent with the current federal transportation conformity rule. <i>See</i> 73 Fed. Reg. 4,419 (Jan. 24, 2008).
R18-2-1433	The rule is not consistent with the current federal transportation conformity rule. <i>See</i> 73 Fed. Reg. 4,419 (Jan. 24, 2008).
R18-2-1434	The rule is not consistent with the current federal transportation conformity rule. <i>See</i> 73 Fed. Reg. 4,419 (Jan. 24, 2008).
R18-2-1435	The rule is not consistent with the current federal transportation conformity rule. <i>See</i> 73 Fed. Reg. 4,419 (Jan. 24, 2008).
R18-2-1436	The rule is not consistent with the current federal transportation conformity rule. <i>See</i> 73 Fed. Reg. 4,419 (Jan. 24, 2008).
R18-2-1438	The rule does not refer to the current federal general conformity rule. <i>See</i> 75 FR 17,278 (Apr. 5, 2010).

5. **Are the rules enforced as written?** Yes No

Except as indicated below, the rules are enforced as written.

Rule	Explanation
Article 14. Conformity Determinations	
R18-2-1403	The rule does not comply with the current federal transportation conformity rule. ADEQ proposes amending this rule to implement the requirements in 40 C.F.R. § 93.122(a)(4)(ii) that written commitments to control measures be obtained prior to a conformity determination if the control measures are not included in a metropolitan planning organization's (MPO's) transportation plan and TIP, and that such commitments be fulfilled.
R18-2-1404	The rule does not comply with the current federal transportation conformity rule. ADEQ proposes amending this rule to implement the requirement in 40 C.F.R. § 93.125(c) that written commitments to mitigation measures be obtained prior to a project-level conformity determination, and that project sponsors comply with such commitments.
R18-2-1406	This rule is no longer required by the current federal transportation conformity rule. Therefore, it is not being enforced because it would be more stringent than what the equivalent federal law requires. ADEQ proposes three actions for R18-2-1406. First, ADEQ proposes the repeal of the current R18-2-1406. Second, ADEQ proposes renumbering R18-2-1438 to R18-2-1406. Finally, ADEQ proposes amending the text coming from R18-2-1438. Currently, R18-2-1438 references the transportation conformity rule adopted in 1993. The proposed amendment updates this reference to EPA's final rule modifying 40 C.F.R. 93 Subpart B – Determining Conformity of General Federal Actions to State or Federal Implementation Plans. 75 FR 17,278 (Apr. 5, 2010).

R18-2-1431	This rule is no longer required by the current federal transportation conformity rule. Therefore, it is not being enforced because it would be more stringent than what the equivalent federal law requires. ADEQ proposes repealing this rule.
R18-2-1432	This rule is no longer required by the current federal transportation conformity rule. Therefore, it is not being enforced because it would be more stringent than what the equivalent federal law requires. ADEQ proposes repealing this rule.
R18-2-1433	This rule is no longer required by the current federal transportation conformity rule. Therefore, it is not being enforced because it would be more stringent than what the equivalent federal law requires. ADEQ proposes repealing this rule.
R18-2-1434	This rule is no longer required by the current federal transportation conformity rule. Therefore, it is not being enforced because it would be more stringent than what the equivalent federal law requires. ADEQ proposes repealing this rule.
R18-2-1435	This rule is no longer required by the current federal transportation conformity rule. Therefore, it is not being enforced because it would be more stringent than what the equivalent federal law requires. ADEQ proposes repealing this rule.
R18-2-1436	This rule is no longer required by the current federal transportation conformity rule. Therefore, it is not being enforced because it would be more stringent than what the equivalent federal law requires. ADEQ proposes repealing this rule.
Article 15. Forest and Range Management Burns	
R18-2-1504	As noted in Item No. 1 (above), the requirement that revisions to the Burn Plan be submitted no later than 14 days before the date on which the F/SLM requests permission to burn is not effective because it doesn't facilitate smoke management. Indeed, this timeframe doesn't allow F/SLMs to take advantage of current meteorological conditions. Consequently, to facilitate smoke management, ADEQ allows F/SLMs to submit revisions to Burn Plans within 14 days. If the requested Article 15 rulemaking is approved by the Governor's Office, ADEQ intends to conduct a robust and extensive stakeholder process to understand their concerns and gather ideas on how to improve the SMP, including R18-2-1504.
R18-2-1507	ADEQ does not require wildfire reporting from F/SLMs in whose jurisdiction a wildfire occurs (D), because there are more accurate methods of obtaining such information due to advances in science and technology, e.g. satellite imagery. If the requested Article 15 rulemaking is approved by the Governor's Office, ADEQ intends to conduct a robust and extensive stakeholder process to understand their concerns and gather ideas on how to improve the SMP, including R18-2-1507.
R18-2-1508	As noted in Item No. 1 (above), this rule addresses "wildland fire use," which is antiquated terminology. The National Wildfire Coordinating Group, which provides national leadership to enable interoperable wildland fire operations among federal, state, local, tribal, and territorial partners, currently recognizes two types of fire: prescribed fire and wildfire. Consequently, ADEQ does not enforce this rule because it is no longer functional.

	If the requested Article 15 rulemaking is approved by the Governor’s Office, ADEQ intends to conduct a robust and extensive stakeholder process to understand their concerns and gather ideas on how to improve the SMP, including R18-2-1508.
R18-2-1512	ADEQ requires smoke management training be obtained through successful completion of a National Wildfire Coordinating Group or F/SLM-equivalent course addressing smoke management. Given the comprehensive training courses offered by the National Wildfire Coordinating Group, ADEQ-approved smoke management workshops are no longer an option for satisfying this requirement (B)(2). If the requested Article 15 rulemaking is approved by the Governor’s Office, ADEQ intends to conduct a robust and extensive stakeholder process to understand their concerns and gather ideas on how to improve the SMP, including R18-2-1512.
R18-2-1515	ADEQ offers the required forms electronically; they are no longer available in paper format (A). If the requested Article 15 rulemaking is approved by the Governor’s Office, ADEQ intends to conduct a robust and extensive stakeholder process to understand their concerns and gather ideas on how to improve the SMP, including R18-2-1515.

6. **Are the rules clear, concise, and understandable?** Yes No

Except as indicated below, the rules are clear, concise, and understandable.

Rule	Explanation
Article 15. Forest and Range Management Burns	
R18-2-1501	Certain terminology is antiquated and, consequently, may be confusing. For instance, “wildland fire use” is no longer used by the National Wildfire Coordinating Group, which provides national leadership to enable interoperable wildland fire operations among federal, state, local, tribal, and territorial partners. If the requested Article 15 rulemaking is approved by the Governor’s Office, ADEQ intends to conduct a robust and extensive stakeholder process to understand their concerns and gather ideas on how to improve the SMP, including R18-2-1501.
R18-2-1508	Certain terminology is antiquated and, consequently, may be confusing. For instance, “wildland fire use” is no longer used by the National Wildfire Coordinating Group, which provides national leadership to enable interoperable wildland fire operations among federal, state, local, tribal, and territorial partners. If the requested Article 15 rulemaking is approved by the Governor’s Office, ADEQ intends to conduct a robust and extensive stakeholder process to understand their concerns and gather ideas on how to improve the SMP, including R18-2-1508.
R18-2-1512	Certain terminology is antiquated and, consequently, may be confusing. For instance, “Prescribed Fire Boss” is no longer used by NWCG; instead NWCG leadership positions for prescribed fire operations include Prescribed Fire Burn Boss Type 1, Prescribed Fire Burn Boss Type 2, and Prescribed Fire Manager. Certification requires coursework and completion of task books unique to each position. If the requested Article 15 rulemaking is approved by the Governor’s Office, ADEQ intends to conduct a robust and extensive stakeholder process to understand their concerns and gather ideas on how to improve the SMP, including R18-2-1512.

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

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

With respect to Article 14. Conformity Determinations, ADEQ described probable economic impacts in qualitative and quantitative terms in the economic impact statement (EIS) prepared when it developed these rules in 1994. *See* EIS, attached hereto. ADEQ believes that the qualitative assessment of the economic impacts of the Article 14 rules remains accurate. With respect to the quantitative assessment, population growth and urban sprawl have likely increased transportation conformity planning activities and associated costs. Government agencies such as certified MPOs, the Arizona Department of Transportation (ADOT), and ADEQ continue to bear such costs. While ADEQ supplemented the federal requirements with respect to consultation procedures as authorized by A.R.S. § 49-408(B), the majority of costs associated with transportation conformity are ultimately attributed to federal - as opposed to state - rules. ADEQ believes that the Article’s impact on the state’s economy, small business, and consumers has not changed since the rules became effective on June 15, 1995.

With respect to Article 15. Forest and Range Management Burns, ADEQ described probable economic impacts in qualitative and quantitative terms in the EIS prepared when it amended these rules in 2004. *See* EIS, attached hereto. The revisions to Article 15 were anticipated to result in minimal economic impact to ADEQ, F/SLMs such as the U.S. Forest Service, National Park Service, Bureau of Land Management, U.S. Fish and Wildlife, and Arizona State Land Department, and entities that may voluntarily comply with the rules such as the Bureau of Indian Affairs. Benefits were anticipated to accrue to the public, including reduced risk for wildfire, *i.e.* protection of property and state resources, and improved air quality, as a result of improvements to Arizona’s SMP. ADEQ believes that the Article’s impact on the state’s economy, small business, and consumers has not changed since the rules became effective on February 6, 2004.

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

10. Has the agency completed the course of action indicated in the agency’s previous five-year-review report?

With respect to “Proposed Course of Action (2016)” below, the language has been taken verbatim from the prior 5YRR except where indicated by the use of brackets.

Rule	Explanation
Article 14. Conformity Determinations	<p><u>Proposed Course of Action (2016)</u>: ADEQ intends to significantly restructure Article 14. In the restructuring process, ADEQ will amend any rule that is not [to] be repealed. ADEQ will keep some version of the following rules, although likely significantly restructured, to comply with federal requirements: R18-2-1401 (definitions), -1402 (applicability), -1405 (consultation procedures), -1430 (commitments for control measures not in plan prior to conformity determinations), and -1433 (commitments for mitigation measures prior to project-level conformity determinations). The other rules in Article 14 will need to be re-evaluated for possible repeal in the future. ADEQ intends to ensure that consultation requirements, and project specific requirements are as clear and concise as possible. The future rules should reflect a more user-friendly process and a technologically savvy environment. A moratorium exemption request has been drafted internally but has not yet</p>

	<p>been submitted to the Governor. If the moratorium exemption is approved, ADEQ intends to submit a final rule by July 2017. Temporarily leaving the rules as is until amended poses de minimis environmental, public health, or economic impacts.</p> <p><i>[The course of action proposed in the prior 5YRR for specific rules within Article 14 is set forth below.]</i></p> <p><u>Completed:</u> While not yet completed, ADEQ is actively engaged in this rulemaking.</p> <p><i>As this status applies to Article 14 generally, it is not repeated for individual rules below.</i></p> <p><u>Explanation:</u> On January 12, 2017, the Governor’s Office approved ADEQ’s request to initiate a rulemaking for Article 14. Conformity Determinations to repeal outdated rules and to improve the remaining, federally required rules.</p> <p>ADEQ’s submission of the final rulemaking has been delayed due to significant involvement from affected stakeholders during the rule design and drafting phases. Specifically, ADEQ received extensive feedback from the U.S. Environmental Protection Agency (EPA), ADOT, and various MPOs, including the Maricopa County Association of Governments (MAG). This delay was further exacerbated by the federal government shutdown in 2018-2019, during which time EPA’s review and comment came to a dead stop. Once government operations resumed, the EPA review process suffered prolonged delay.</p> <p>On April 19, 2021, ADEQ submitted the Notice of Proposed Rulemaking (NPRM) to the Secretary of State (SOS) for publication. ADEQ distributed an advanced pre-publication copy of the NPRM to stakeholders. MAG subsequently contacted the Air Quality Division Director and expressed concern that their comments during the stakeholder process were not adequately addressed and, consequently, requested the NPRM be withdrawn. Based on MAG’s request, and to ensure all stakeholder concerns are fully addressed, ADEQ requested that the SOS stop publication of the NPRM, which it did.</p> <p>Accordingly, ADEQ is re-engaging with stakeholders to resolve MAG’s - as well as any other stakeholder’s - concerns. In addition to further stakeholder consultation and feedback, any changes will require EPA review. ADEQ now anticipates submitting the NPRM to the SOS by February 28, 2022. In turn, submission of the rulemaking to GRRC would be June 2, 2022.</p> <p><i>As this explanation applies to Article 14 generally, it is not repeated for individual rules below.</i></p>
R18-2-1401	<p><u>Proposed Course of Action (2016):</u> Amend. Any future rule will require a version of these definitions. If the moratorium exemption is approved, ADEQ intends to submit a final rule by July 2017.</p>
R18-2-1402	<p><u>Proposed Course of Action (2016):</u> Amend. Any future rule will require a rule for applicability. If the moratorium exemption is approved, ADEQ intends to submit a final rule by July 2017.</p>
R18-2-1403	<p><u>Proposed Course of Action (2016):</u> Evaluate for repeal or amendment. This is a substantive transportation conformity requirement that is likely not necessary to meet transportation conformity SIP requirements. If the moratorium exemption is approved, ADEQ intends to submit a final rule by July 2017.</p>

R18-2-1404	<u>Proposed Course of Action (2016)</u> : Evaluate for repeal or amendment. This is a substantive transportation conformity requirement that is likely not necessary to meet transportation conformity SIP requirements. If the moratorium exemption is approved, ADEQ intends to submit a final rule by July 2017.
R18-2-1405	<u>Proposed Course of Action (2016)</u> : Amend. Any future rule will require a consultation rule. ADEQ will need to evaluate with stakeholders how best to streamline and amend this rule, and meet federal requirements as they have changed over the years. If the moratorium exemption is approved, ADEQ intends to submit a final rule by July 2017.
R18-2-1406	<u>Proposed Course of Action (2016)</u> : Evaluate for repeal or amendment. This is a substantive transportation conformity requirement that is likely not necessary to meet transportation conformity SIP requirements. If the moratorium exemption is approved, ADEQ intends to submit a final rule by July 2017.
R18-2-1407	<u>Proposed Course of Action (2016)</u> : Evaluate for repeal or amendment. This is a substantive transportation conformity requirement that is likely not necessary to meet transportation conformity SIP requirements. If the moratorium exemption is approved, ADEQ intends to submit a final rule by July 2017.
R18-2-1408	<u>Proposed Course of Action (2016)</u> : Evaluate for repeal or amendment. This is a substantive transportation conformity requirement that is likely not necessary to meet transportation conformity SIP requirements. If the moratorium exemption is approved, ADEQ intends to submit a final rule by July 2017.
R18-2-1409	<u>Proposed Course of Action (2016)</u> : Evaluate for repeal or amendment. This is a substantive transportation conformity requirement that is likely not necessary to meet transportation conformity SIP requirements. If the moratorium exemption is approved, ADEQ intends to submit a final rule by July 2017.
R18-2-1410	<u>Proposed Course of Action (2016)</u> : Evaluate for repeal or amendment. This is a substantive transportation conformity requirement that is likely not necessary to meet transportation conformity SIP requirements. If the moratorium exemption is approved, ADEQ intends to submit a final rule by July 2017.
R18-2-1411	<u>Proposed Course of Action (2016)</u> : Evaluate for repeal or amendment. This is a substantive transportation conformity requirement that is likely not necessary to meet transportation conformity SIP requirements. If the moratorium exemption is approved, ADEQ intends to submit a final rule by July 2017.
R18-2-1412	<u>Proposed Course of Action (2016)</u> : Evaluate for repeal or amendment. This rule may or may not be necessary to meet transportation conformity SIP requirements. Further analysis is needed. If the moratorium exemption is approved, ADEQ intends to submit a final rule by July 2017.
R18-2-1413	<u>Proposed Course of Action (2016)</u> : Evaluate for repeal or amendment. This is a substantive transportation conformity requirement that is likely not necessary to meet transportation conformity SIP requirements. If the moratorium exemption is approved, ADEQ intends to submit a final rule by July 2017.
R18-2-1414	<u>Proposed Course of Action (2016)</u> : Evaluate for repeal or amendment. This is a substantive transportation conformity requirement that is likely not necessary to meet transportation conformity SIP requirements. If the moratorium exemption is approved, ADEQ intends to submit a final rule by July 2017.
R18-2-1415	<u>Proposed Course of Action (2016)</u> : Evaluate for repeal or amendment. This is a substantive transportation conformity requirement that is likely not necessary to meet transportation conformity SIP requirements. If the moratorium exemption is approved, ADEQ intends to submit a final rule by July 2017.

	conformity SIP requirements. If the moratorium exemption is approved, ADEQ intends to submit a final rule by July 2017.
R18-2-1429	<u>Proposed Course of Action (2016)</u> : Evaluate for repeal or amendment. This is a substantive transportation conformity requirement that is likely not necessary to meet transportation conformity SIP requirements. If the moratorium exemption is approved, ADEQ intends to submit a final rule by July 2017.
R18-2-1430	<u>Proposed Course of Action (2016)</u> : Amend. ADEQ will need to amend this rule to ensure consistency with 40 CFR 51.390 and the language in 40 CFR 93.122(a)(4)(ii). ADEQ will need to clarify the regional conformity determination process for crediting emissions reductions from control measures not included in the approved transportation improvement program (TIP) or transportation plan.
R18-2-1431	<u>Proposed Course of Action (2016)</u> : Evaluate for repeal or amendment. This is a substantive transportation conformity requirement that is likely not necessary to meet transportation conformity SIP requirements. If the moratorium exemption is approved, ADEQ intends to submit a final rule by July 2017.
R18-2-1432	<u>Proposed Course of Action (2016)</u> : Evaluate for repeal or amendment. This is a substantive transportation conformity requirement that is likely not necessary to meet transportation conformity SIP requirements. If the moratorium exemption is approved, ADEQ intends to submit a final rule by July 2017.
R18-2-1433	<u>Proposed Course of Action (2016)</u> : Amend. ADEQ will need to amend this rule to ensure consistency with 40 CFR 51.390 and the language in 40 CFR 93.125(c). ADEQ will need to clarify the conformity determination process for crediting emissions reductions from project-level mitigation or control measures.
R18-2-1434	<u>Proposed Course of Action (2016)</u> : Evaluate for repeal or amendment. This is a substantive transportation conformity requirement that is likely not necessary to meet transportation conformity SIP requirements. If the moratorium exemption is approved, ADEQ intends to submit a final rule by July 2017.
R18-2-1435	<u>Proposed Course of Action (2016)</u> : Evaluate for repeal or amendment. This is a substantive transportation conformity requirement that is likely not necessary to meet transportation conformity SIP requirements. If the moratorium exemption is approved, ADEQ intends to submit a final rule by July 2017.
R18-2-1436	<u>Proposed Course of Action (2016)</u> : Evaluate for repeal or amendment. This is a substantive transportation conformity requirement that is likely not necessary to meet transportation conformity SIP requirements. If the moratorium exemption is approved, ADEQ intends to submit a final rule by July 2017.
R18-2-1438	<u>Proposed Course of Action (2016)</u> : Evaluate for repeal or amendment. This is a substantive transportation conformity requirement that is likely not necessary to meet transportation conformity SIP requirements. If the moratorium exemption is approved, ADEQ intends to submit a final rule by July 2017.
Article 15. Forest and Range Management Burns	<p><u>Proposed Course of Action (2016)</u>: The current course of action that ADEQ intends to take for each of the rules is [listed below]. Looking towards the future, however, because a new regional haze rule is expected to be finalized within the next several months, some of the Article 15 rules may be subject to additional changes in order to maintain consistency with federal requirements.</p> <p><u>Completed</u>: While not yet completed, ADEQ has requested approval from the Governor's Office to engage in this rulemaking.</p> <p><i>As this status applies to Article 15 generally, it is not repeated for individual rules below.</i></p>

	<p><u>Explanation:</u> The proposed revisions to Article 15 have not been completed because ADEQ allocated its resources to activities of a higher or competing priority.</p> <p>Agency priorities, however, have recently shifted. In the midst of another catastrophic wildfire season, Governor Ducey has made it a priority to reduce wildfire risk to Arizona communities. For instance, on June 18, 2021, Governor Ducey signed a \$100 million wildfire relief package to support firefighters and safety officials as they battle wildfires, ensure Arizona communities have the resources necessary for post-fire disasters such as flooding, and reduce the risk from future wildfires.</p> <p>Improving and modernizing the Article 15 rules will be another step to reduce the threat of devastating wildfires in Arizona and allow ADEQ to provide excellent smoke management services to F/SLMs and the general public. Accordingly, ADEQ submitted an exemption request to the Governor’s Office on August 23, 2021, requesting permission to update and clarify the rules in Article 15 to reflect the current state of science and technology. In addition to improving the rules, ADEQ will be fulfilling its 2016 5YRR promise to GRRC to make improvements to outdated rules. ADEQ will review the 2016 proposed course of action for individual rules and implement into the requested Article 15 rulemaking if still applicable. ADEQ does not anticipate that additional changes will be necessary to maintain consistency with federal regional haze requirements. If approved by the Governor’s Office, ADEQ anticipates submitting the rulemaking to GRRC in August 2022.</p> <p><i>As this explanation applies to Article 15 generally, it is not repeated for individual rules below.</i></p>
R18-2-1501	<p><u>Proposed Course of Action (2016):</u> ADEQ intends to amend this rule in the near future. Some of the terminology is out of date, which may affect clarity of the rules. "Wildland fire use" is no longer used as a fire management technique and this phrase is used in this rule. To leave the term in implies that in part, ADEQ declares or announces wildfires, which is really a forest service duty. ADEQ intends to submit this rule to the Council in March of 2019.</p>
R18-2-1503	<p><u>Proposed Course of Action (2016):</u> ADEQ intends to amend this rule in the near future. Some of the terminology is out of date, which may affect clarity of the rules. "Wildland fire use" is no longer used as a fire management technique and references to this phrase should be removed from rule. ADEQ intends to submit this rule to the Council in March of 2019.</p>
R18-2-1504	<p><u>Proposed Course of Action (2016):</u> ADEQ intends to amend this rule in the near future. The rule requires land managers to model smoke impacts and submit this information with a Prescribed Burn Plan. Land managers do not and should not necessarily be expected to have the resources or expertise to model, and further, modeling two weeks or more in advance of a burn is too far ahead of time for the model to yield accurate results. ADEQ instead evaluates the planned burns 24-48 hours prior to them as needed. ADEQ intends to submit this rule to the Council in March of 2019. Until the rule is amended, ADEQ will not enforce the modeling requirement on behalf of land managers and will instead model each burn plan on a case by case basis as necessary.</p>
R18-2-1506	<p><u>Proposed Course of Action (2016):</u> ADEQ intends to amend this rule in the near future. Some of the terminology is out of date, which may affect clarity of the rules. "Wildland fire use" is no longer used as a fire management technique and this phrase is used in this rule. Also, the reference to 40 CFR 51.309 should be removed because ADEQ will likely use this rule to comply with [4]0 CFR 51.308, instead. ADEQ intends to submit this rule to the Council in March of 2019.</p>

R18-2-1507	<u>Proposed Course of Action (2016)</u> : ADEQ intends to amend this rule in the near future. Over the years, ADEQ has found that it is inappropriate and not beneficial to collect wildfire information. This subsection should be removed when the rule is amended. There are more effective ways for the public to be aware of wildfire activity. It is also not ADEQ's purview to track wildfire activity. ADEQ intends to submit this rule to the Council in March of 2019.
R18-2-1508	<u>Proposed Course of Action (2016)</u> : The fire management technique that forms the basis of this rule is obsolete. The rule should likely be repealed and removed from the SIP at the same time the other rules are amended in order to avoid state-federal enforceability dissonance. ADEQ intends to submit this rule to the Council in March of 2019. In the meantime, as all land managers are aware, land managers are to assume that ADEQ would not respond to a wildfire management plan and by default the land managers should assume any wildfire management is approved by default until the rule is repealed.
R18-2-1510	<u>Proposed Course of Action (2016)</u> : ADEQ intends to amend this rule in the near future. Some of the terminology is out of date, which may affect clarity of the rules. "Wildland fire use" is no longer used as a fire management technique and this phrase is used in this rule. ADEQ intends to submit this rule to the Council in March of 2019.
R18-2-1511	<u>Proposed Course of Action (2016)</u> : ADEQ intends to amend this rule in the near future. Some of the terminology is out of date, which may affect clarity of the rules. "Wildland fire use" is no longer used as a fire management technique and this phrase is used in this rule. ADEQ intends to submit this rule to the Council in March of 2019.
418-2-1513	<u>Proposed Course of Action (2016)</u> : ADEQ intends to amend this rule in the near future. Some of the terminology is out of date, which may affect clarity of the rules. "Wildland fire use" is no longer used as a fire management technique and this phrase is used in this rule. To leave the term in implies that in part, ADEQ declares or announces wildfires, which is really a forest service duty. ADEQ intends to submit this rule to the Council in March of 2019.

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

Except as indicated below, ADEQ believes that these rules impose the least burden and costs to regulated persons, including paperwork and other compliance costs, necessary to achieve the underlying regulatory and statutory objective.

Rule	Explanation
Article 14. Conformity Determinations	
R18-2-1401	The rule does not conform to the current federal transportation conformity rule. Because it is more stringent than what the equivalent federal law requires, it does not impose the least burden to regulated persons necessary to achieve the underlying regulatory objective.
R18-2-1402	The rule does not conform to the current federal transportation conformity rule. Because it is more stringent than what the equivalent federal law requires, it does not impose the least burden to regulated persons necessary to achieve the underlying regulatory objective.

R18-2-1436	The rule does not conform to the current federal transportation conformity rule. Because it is more stringent than what the equivalent federal law requires, it does not impose the least burden to regulated persons necessary to achieve the underlying regulatory objective.
Article 15. Forest and Range Management Burns	
R18-2-1503	This rule does not currently impose the least burden to regulated persons necessary to achieve the underlying regulatory objective. The annual registration could be completed electronically (A) and the information requested could be streamlined (B).
R18-2-1504	This rule does not currently impose the least burden to regulated persons necessary to achieve the underlying regulatory objective. As noted in Item No. 1, the requirement that revisions to the Burn Plan be submitted no later than 14 days before the date on which the F/SLM requests permission to burn is not effective because it doesn't facilitate smoke management. This two-week delay is a burden on F/SLMs because they cannot take advantage of current meteorological conditions to conduct the prescribed burn.
R18-2-1507	This rule does not currently impose the least burden to regulated persons necessary to achieve the underlying regulatory objective. As noted in Item No 5, ADEQ does not require wildfire reporting from F/SLMs in whose jurisdiction a wildfire occurs (D), because there are more accurate methods of obtaining such information due to advances in science and technology, e.g. satellite imagery.

12. **Are the rules more stringent than corresponding federal laws?** Yes ___ No **X**

Except as indicated below, the rules are not more stringent than corresponding federal laws.

With respect to Article 14. Conformity Determinations, R18-2-1403, R18-2-1404, R18-2-1406 through R18-2-1436 are more stringent than corresponding federal laws, namely: CAA § 176(c)(4) and the current federal transportation conformity rule, *see* 73 Fed. Reg. 4,419 (Jan. 24, 2008). With the exception of consultation procedures, there is no statutory authority to exceed the requirements of federal law. A.R.S. § 49-408(B) (“Notwithstanding any other provisions of this section, the director may adopt consultation procedures for the public or affected agencies which supplement the requirements of 40 Code of Federal Regulations, part 51, subpart T.”). The current rulemaking for Article 14 will create consistency between state and federal transportation conformity rules and, therefore, state transportation conformity rules will no longer be more stringent than corresponding federal laws. ADEQ will not be retaining additional consultation procedures beyond what the federal transportation conformity rule requires.

With respect to Article 15. Forest and Range Management Burns, the rules are not more stringent than corresponding federal laws, namely: CAA § 169A and 40 CFR §§ 51.308 and 51.309 of the Regional Haze Rule.

13. **For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:**

Not applicable. The Article 14 rules were adopted in 1995. The Article 15 rules were adopted in 1996 and last amended in 2004.

14. Proposed course of action

As discussed in Item No. 10, ADEQ is actively engaged in a rulemaking for Article 14. Conformity Determinations to repeal outdated rules and to improve the remaining, federally required rules. Specifically, ADEQ anticipates amending R18-2-1401 through 1405 and repealing R18-2-1407 through 1437. Additionally, ADEQ anticipates repealing, renumbering (coming from R18-2-1438), and amending R18-2-1406, as well as renumbering (going to R18-2-1406) R18-2-1438. ADEQ anticipates submitting this rulemaking to GRRC in June 2022. Once approved, ADEQ will then submit these rules to EPA to revise Arizona's SIP.

As discussed in Item No. 10, ADEQ submitted an exemption request to the Governor's Office on August 23, 2021, requesting permission to update and clarify the rules in Article 15 to reflect the current state of science and technology. In addition to improving the rules, ADEQ will be fulfilling its 2016 5YRR promise to GRRC to make improvements to outdated rules. ADEQ will review the 2016 proposed course of action for individual rules and implement into the requested Article 15 rulemaking if still applicable. ADEQ does not anticipate that additional changes will be necessary to maintain consistency with federal regional haze requirements. If approved by the Governor's Office, ADEQ anticipates submission of the rulemaking to GRRC would be in August 2022. Once approved, ADEQ will then submit these rules to EPA to revise Arizona's SIP.

Attachments

ARIZONA DEPARTMENT OF ENVIRONMENTAL QUALITY

1994 TRANSPORTATION CONFORMITY RULES

ECONOMIC IMPACT STATEMENT

AND STATEMENT OF IMPACT ON SMALL BUSINESS

I. Description and Purpose of the Proposed Amendments

A. Background

The Arizona Department of Environmental Quality (ADEQ) is proposing rules to establish the criteria and procedures for determining that transportation plans, programs and projects which are funded or approved under Title 23 U.S.C. or the Federal Transit Act conform with State or Federal air quality implementation plans. This action is required under § 176(c)(4) of the Clean Air Act, as amended in 1990.

Conformity to an implementation plan is defined in the Clean Air Act as conformity to an implementation plan's purpose of eliminating or reducing the severity and number of violations of the national ambient air quality standards and achieving expeditious attainment of such standards. In addition, federal activities may not cause or contribute to new violations of air quality standards, exacerbate existing violations or interfere with timely attainment or required interim emission reductions towards attainment. This proposed rule establishes the process by which the Federal Highway Administration and the Federal Transit Administration of the United States Department of Transportation and metropolitan planning organizations determine conformity of highway and transit projects.

This rule requires the Arizona Department of Transportation (ADOT), metropolitan planning organizations (MPOs) and the United States Department of Transportation (USDOT) to make conformity determinations on metropolitan transportation plans and transportation improvement programs (TIPs) before they are adopted, approved or accepted. In addition, highway or transit projects which are funded or approved by the Federal Highway Administration (FHWA) or the Federal Transit Administration (FTA) must be found to conform before they are approved or funded by USDOT, ADOT or an MPO.

The provisions of this rule apply with respect to those transportation-related pollutants for which an area is designated nonattainment or is subject to a maintenance plan approved under Clean Air Act §175A (i.e., ozone, carbon monoxide (CO), nitrogen dioxide (NO₂), and particles with an aerodynamic diameter of less than or equal to a nominal 10 micrometers (PM-10)). The provisions

of this rule also apply with respect to the following precursors of those pollutants: volatile organic compounds (VOC) and oxides of nitrogen (NO_x) in ozone areas, NO_x in NO₂ areas, and VOC and NO_x in PM-10 areas.

The federal rule at 40 CFR 51.396 requires states to submit to EPA revisions to their state implementation plans (SIPs) establishing conformity criteria and procedures consistent with this rule by November 25, 1994. However, the requirements of this rule apply as a matter of federal law beginning December 27, 1993. All conformity determinations made after this date must be made according to the requirements of this rule and, after the conformity SIP revision is approved by EPA, according to the requirements of the applicable SIP.

The criteria and procedures in this rule differ according to the pollutant for which an area is designated nonattainment or maintenance, and according to the type of action (i.e., transportation plan, TIP, project from a conforming transportation plan and TIP, or project not from a conforming transportation plan and TIP). The rule requires regional emissions analysis of transportation plans and TIPs. All regionally significant highway and transit projects, regardless of funding source, must either come from a conforming transportation plan and TIP, have been included in the regional emissions analysis of the plan and TIP which supports the plan or TIP's adoption, or be included in a newly performed regional analysis. Transportation projects funded or approved by FHWA or FTA must also be analyzed for their localized air quality impacts in PM-10 and CO nonattainment areas.

The criteria and procedures also vary according to the period of time in which the conformity determination is made. Transportation plans, TIPs and projects must satisfy different criteria depending on whether a state has submitted a SIP revision which establishes control strategies to demonstrate reasonable further progress and attainment. Criteria and procedures also vary depending on whether the SIP revision has been submitted, approved, disapproved, or the Clean Air Act deadline for submission of the SIP revision has been missed.

B. History of Conformity

Conformity provisions first appeared in the Clean Air Act Amendments of 1977 (Pub. L. 95-95). Although these provisions did not define conformity, they provided that no federal department "shall (1) engage in, (2) support in any way or provide financial assistance for, (3) license or permit, or (4) approve any activity which does not conform to a [State implementation plan] after it has been approved or promulgated." Assurance of conformity was an affirmative responsibility of the head of each federal agency. In

addition, no MPO could approve any transportation project, program, or plan which did not conform to a State or Federal implementation plan.

Following enactment of the 1977 Amendments, DOT consulted with EPA to develop conformity procedures for programs administered by FHWA and the Urban Mass Transportation Administration (now FTA). The June 14, 1978 "Memorandum of Understanding Regarding Integration of Transportation and Air Quality Planning" provided EPA an opportunity to jointly review and comment on the conformity of transportation plans and TIPs.

In April 1980, EPA published an advance notice of proposed rulemaking on conformity (45 FR 21590, April 1, 1980). EPA maintained that the Congressional intent of Clean Air Act §176(c) was to prevent federal actions from causing a delay in the attainment or maintenance of the NAAQS. However, no further rulemaking action was taken.

In June 1980 EPA and DOT jointly issued a guidance document entitled "Procedures for Conformance of Transportation Plans, Programs and Projects with Clean Air Act State Implementation Plans." This guidance established that in nonattainment and maintenance areas (areas experiencing violations of the national ambient air quality standards (NAAQS) and required to develop air quality maintenance plans under 40 CFR part 51, Subpart D), conformity determinations must be documented as a necessary element of all certifications, TIP reviews, and environmental impact statement findings. It was necessary to make certifications that the planning process had been conducted according to a continuous, cooperative, and comprehensive transportation planning process and consistent with Clean Air Act requirements.

Subsequently, USDOT developed and issued an interim final rule (46 FR 8426, January 26, 1981) based upon the joint guidance. USDOT established this rule to meet its obligations under §176(c) of the Clean Air Act, and the rule was put into effect immediately upon publication. It amended 23 CFR part 770 (FHWA Air Quality Guidelines) and added 49 CFR part 623 (UMTA Air Quality Conformity and Priority Procedures).

C. Conformity Under the Clean Air Act As Amended in 1990

In addition to adding specific provisions regarding the conformity of transportation actions, the Clean Air Act Amendments of 1990 expand the scope and content of the conformity provisions by defining conformity to an implementation plan to mean:

"conformity to the plan's purpose of eliminating or reducing the severity and number of violations of the

national ambient air quality standards and achieving expeditious attainment of such standards; and that such activities will not (i) cause or contribute to any new violation of any standards in any area; (ii) increase the frequency or severity of any existing violation of any standard in any area; or (iii) delay timely attainment of any standard or any required interim emission reductions or other milestones in any area."

The Clean Air Act Amendments of 1990 emphasize reconciling the estimates of emissions from transportation plans and programs with the implementation plan, rather than simply providing for the implementation of TCMs. This integration of transportation and air quality planning is intended to protect the integrity of the implementation plan by ensuring that its growth projections are not exceeded without additional measures to counterbalance the excess growth, that progress targets are achieved, and that air quality maintenance efforts are not undermined.

II. Impact of the Federal Mandate and the State Mandate Contained in H.B. 2241

The federal rule at 40 CFR 51.396 lists the federal rule sections that states must adopt verbatim (except for clarifying language). ADEQ is also constrained by A.R.S §49-408 (H.B. 2241, Chap. 341, Laws 1994) stating that Arizona may not propose a rule that is more stringent than the federal rule, except in the area of consultation, where ADEQ's rule may supplement the federal rule.

The impact of these provisions for both the public sector and the private sector is the same whether Arizona adopts these rules or whether the EPA continues to enforce transportation conformity. No economic impact accrues to the regulated community based on Arizona's adoption of these rules. Some impact accrues to the governmental agencies involved in the consultation procedures, due to the minimum requirements for procedures in ADEQ's proposed rule.

III. Description of the classes of persons who will be affected directly or indirectly by the proposed rule, and

IV. Description of the probable quantitative and qualitative impact of the proposed rule, economic and otherwise, on affected classes of persons

Federal regulations are enforceable in Arizona under federal law on the effective date of the regulations, regardless of whether they are adopted as state rule. The federal transportation conformity rules became effective on December 27, 1993. The current year's

transportation planning cycle, as well as the cycle for 1995, will be based solely on the federal rule.

The proposed rule will affect mainly governmental agencies (state, county and local) which are responsible for, among other things, air quality modeling and emissions budgeting, transportation conformity determinations for regionally significant projects and consultation procedures/public hearings. These agencies will continue to bear the costs of rule implementation, which are already being borne as a result of the federal regulation. Since transportation conformity has existed in some form since 1977, the framework for transportation control measures (TCM) tracking and consultation has already been established.

The beneficiaries of the proposed rule will be all the residents of local jurisdictions which are currently in non-attainment, and which achieve the goals of attaining national ambient air quality standards (NAAQS). The rule will help ensure that the State Implementation Plan (SIP) achieves its goal of attaining NAAQS.

The environmental and health benefits of attaining NAAQS are attributable to the strategies contained in the SIP, rather than to this rule directly.

V. The probable costs and benefits to the department of environmental quality and any other state agency, of the implementation of the proposed rule, and any anticipated effects on state revenues

A. ADEQ -- At the present time, the Phoenix Metropolitan Area in Maricopa County is in non-attainment for carbon monoxide, ozone and particulate matter (PM10). The Tucson Metropolitan Area in Pima County is in non-attainment for carbon monoxide. And the following other local areas are in non-attainment for PM10: Douglas, Nogales, Yuma Metropolitan Area, Ajo, Rillito, Hayden, Paul Spur, Payson and Bullhead City.

ADEQ is currently responsible for air quality modeling and emission budget development for all Arizona non-attainment areas except for Maricopa and Pima counties. These functions are handled by the Maricopa Association of Governments (MAG) and the Pima Association of Governments (PAG).

Annual costs to ADEQ for public hearings and consultation procedures are expected to be less than \$10,000. The onus for initiating the consultation procedures tends to fall on ADOT and the MPOs under the federal rule being implemented.

ADEQ also incurred transportation conformity expenses as follows in

order to conduct public workshops to draft the proposed rule:

Facilitators (Kate Fay and Associates)	\$26,486.00
Printing costs	\$3,137.00
Mailing costs	\$700.00
Meeting space rental	\$2,907.16
Total expenses	\$33,230.71

B. ADOT -- Compliance with federal mandates for transportation conformity within ADOT rests with the Transportation Planning Division, in particular, the members of the MPOs/COGs (Councils of Governments) Team composed of two planners in the Transportation Planning Section and a Transportation Engineer Specialist in the Environmental Planning Section of the Highways Division. The Transportation Engineer Specialist conducts air quality modeling and project level analysis for all transportation projects that involve the expenditure of federal monies.

These three FTEs are currently deployed three-quarters of the year in this effort, and about 10% of the work time of two support staff members are utilized. This brings the annual cost to ADOT to about \$120,000 which is part of its current budget. The federal rule will require the hiring of an additional Transportation Environmental Planner because of the anticipated increase in the workload. The additional personnel cost will be about \$59,000 due to the federal regulations.

Computer equipment will need to be purchased, with an estimated cost of \$5,000 for software and hardware, and \$50,000 annually is expected to be earmarked for consultation procedures and public hearings over the next five years. Total incremental costs to ADOT for implementation of the federal rule are estimated to be \$114,000.

ADOT must comply with the CAA or certain federal funding for the State could be withheld by the Federal Highway Administration. Failure to adopt state rules on transportation conformity and to make the corresponding SIP revision could result in the loss of an estimated \$765 million of federal transportation funds.

IV. The probable costs and benefits, direct and indirect, to a political subdivision of this state, and any anticipated effects on its revenues

A. MARICOPA ASSOCIATION OF GOVERNMENTS -- Over the last four

years, MAG has reportedly spent \$600,000, or an average of about \$150,000 annually to conduct air quality modeling and emissions budgeting, according to the Air Quality Planner of MAG's Transportation Planning Section. While the cost in the initial year was about \$200,000, with more experience gained by staff, the costs have decreased to about \$105,000, the amount that has been budgeted for this fiscal year. No additional costs to MAG are anticipated as a result of the proposed rule; however, advertising for public hearings and consultation procedures could cost between \$1,000 and \$2,000 a year.

Costs to MAG member governments such as the City of Phoenix vary, although the main component consists of personnel time being devoted to attendance at meetings and public hearings and are covered in the City's existing budget. Three City of Phoenix middle managers are involved in the process on a part-time basis. No additional costs are anticipated due to the state rulemaking.

B. PIMA ASSOCIATION OF GOVERNMENTS -- The annual cost estimates to PAG for staff time devoted to implementing the transportation/air quality plan ranges between \$50,000 and \$100,000. These consist of current costs already covered by existing budgets for PAG, PAG Transportation Planning, and PAG-member jurisdiction staff. The annual costs for public hearing/consultation procedures already developed by PAG for transportation planning as well as conformity is estimated to be between \$120,000 and \$125,000, which include direct expenses for printing, mailing and graphic services, consultant services for public opinion polls, development of an informational brochure, project fact sheets and the preparation of cable television spots.

The incremental cost portion attributable to the federal rule is estimated by the PAG Physical Planning Manager to be about \$40,000 or one-third of the transportation/air quality planning costs.

C. YUMA METROPOLITAN PLANNING ORGANIZATION -- As of the end of FY 1994, YMPO had spent \$7,686 for the conformity component of its transportation/air quality planning activities, according to its Executive Director. Costs for the coming fiscal year, however, are expected to be between \$12,000 and \$15,000.

VII. The probable costs and benefits, direct and indirect, to private persons, of the implementation and enforcement of the rules, and

VIII. The probable costs and benefits, direct and indirect, to consumers or users of any product or service, of the implementation and enforcement of the proposed rule.

Strictly speaking, there are no direct economic impacts on private persons, private businesses (including small businesses) and consumers, which derive exclusively from the proposed rule's requirements. There are no fees or other financial burdens imposed by the rule on the private sector or residents of a non-attainment area. The taxpaying public will, however, inevitably bear the incremental costs of the added requirements.

The costs to the private sector and the general public of involvement in the transportation and air quality agencies' public hearings/consultation procedures could arguably carry a price tag, but this would be impossible to quantify, since public involvement is voluntary and not mandatory. There is uncertainty associated with the fact that the state rule sets minimum standards for consultation.

IX. Conclusion

In conclusion, the purpose in Arizona adopting and slightly modifying the federal regulations for transportation conformity is to meet the federal mandate for a SIP revision containing these provisions and to avoid the imposition of monetary sanctions and the imposition of a federally-imposed plan for failure to comply with federal law.

When federal standards and requirements are embodied in state rule, they are implementable and enforceable by state personnel. As noted above, there is minimal impact to state, local and federal governmental entities, due to the state rulemaking. The primary costs of transportation conformity are due to the federal rulemaking and ADEQ has only supplemented the consultation procedures where it is allowed to so do by law.

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 2. DEPARTMENT OF ENVIRONMENTAL QUALITY -

AIR POLLUTION CONTROL

ECONOMIC, SMALL BUSINESS, AND CONSUMER IMPACT STATEMENT

A. Rule Identification

The sixteen rules amended in this rulemaking are R18-2-602, ■Unlawful Open Burning,• and Article 15, ■Forest and Range Management Burns,• R18-2-1501 through R18-2-1515.

B. Entities Affected by R18-2-602, ■Unlawful Open Burning•

Open burning may be done by many entities for a variety of purposes, such as waste disposal, weed control, site preparation, disease and pest prevention, resource management, and training and fire prevention. Unless specifically exempted by this rule, persons setting outdoor fires would have to obtain a permit from ADEQ or a delegated authority, a city or fire district, or one of the three counties with independent authority to issue permits (Maricopa, Pima, Pinal). Persons who might be subject to this final rule therefore include: (1) individuals; (2) businesses, such as farms, ranches, orchards, electric generating plants, construction and mines; (3) federal sources, such as military installations; (4) state agencies, such as the Departments of Transportation and Corrections; and, (5) political subdivisions, such as counties, cities, irrigation districts, and fire districts.

ADEQ has delegated authority to issue permits to about 50 fire departments, fire districts and cities or towns located in 9 of Arizona's 15 counties. Authority to issue permits in Graham County is delegated to Graham County Health Department, while Maricopa, Pima and Pinal Counties have independent authority to permit fires. ADEQ has jurisdiction to issue permits in areas outside the delegated authorities' jurisdiction in these counties. ADEQ typically issues more than 100 open burning permits annually to a wide variety of permittees, most of which are for burns in Gila and Cochise Counties. Permits for burns in LaPaz, Yavapai, Santa Cruz, Apache, Greenlee and Coconino Counties are also common.

The following represents a sampling of the level of permits issued by delegated authorities based

on the calendar year 2002. The City of Prescott in Yavapai County issued about 200 permits in 2002, of which the majority was for residential burning. The City of Yuma issued 15 open burning permits, mainly for agriculture. Rural Metro Fire Department, which has jurisdiction outside of the municipalities of Somerton and Yuma, typically issues 300-400 residential open burning permits and 50-60 permits for agriculture in Yuma County. The City of Payson in Gila County issued 146 open burning permits for brush and weeds. Bullhead City in Mohave County annually issues 50-70 open burning permits of which the majority is for residential burning. The 384 open burning permits issued by Graham County Health Department in fiscal year 2003 were all for purposes of weed abatement.

C. Potential Impact of R18-2-602

This rulemaking only makes minor changes and incorporates current practice, therefore ADEQ expects the rule to create minimal actual impact, such as the costs associated with minor changes in record-keeping, documentation, and reporting requirements. ADEQ and delegated authorities will have to maintain copies of effective permits, as well as prepare annual reports for submission to ADEQ. While some of these changes will generate minimal costs, ADEQ expects the overall benefits to exceed those costs. It should also be noted that ADEQ does not charge fees for open burning permits because most permits are issued in a day or two and it would require minimal administrative effort.

D. Entities Affected by Article 15, ■Forest and Range Management Burns•

Since ADEQ has jurisdiction, outside tribal lands, over air pollution resulting from prescribed burning, this rule will impact the following federal and state agencies that do burning: (1) Federal Land Managers (FLMs) involved in burning activities, such as U.S. Forest Service, U.S. Fish and Wildlife Service, National Parks Service, Bureau of Land Management, Bureau of Reclamation, Department of Defense; (2) State Land Managers (SLMs), such as Arizona State Land Department, Arizona Department of Transportation, Arizona Department of Game and Fish, and Parks Department. Additionally, there are entities not actually subject to this rule but who may voluntarily comply with some or all of the rule provisions, such as the Bureau of Indian Affairs, one of the largest burners in Arizona. Also, private land managers, such as The Nature Conservancy, or individuals, might also need to comply with this rule or request assistance from one of the F/SLMs.

Each year, ADEQ receives more than 1,000 daily burn requests from F/SLMs. For example, in calendar year 2002, about 1,400 requests to burn were received, and slightly more than 104,000 acres were burned, which represents about 56 percent of the total acres approved to burn. This figure is approximately equal to the the number of acres burned each year for the past ten years (106,429) on federal, state, and tribal lands. The major fuel types burned in 2002 and their relative proportions include: piled ponderosa pine (22%), non-piled ponderosa pine (21%), and natural ponderosa pine (17%). The remaining 40% of fuel types include: natural shrub, non-piled grass and ponderosa pine, natural grass, natural grass and ponderosa pine, non-piled mixed, and other.

For comparison, in 1999, F/SLMs requested nearly 450,000 acres to burn. Although ADEQ approved close to 80 percent of the requested acreage, the actual number of acres burned was about 200,000. The fuel types burned in 1999 were: broadcast slash (32%), ponderosa pine (22%), grass (20%), slash piles (14%), brush (10%), and pinyon juniper (2%). As shown with these two years, proportions, however, vary from one year to another.

Combining acres burned for 1994 through 1999, shows the percentage of acres burned by F/SLMs agencies: U.S. Forest Service (49%), Bureau of Indian Affairs (30%), National Park Service (7%), Bureau of Land Management (7%), U.S. Fish and Wildlife (6%), Arizona State Land Department (1%), and other (1%).

E. Potential Impact of Article 15

Because this rule involves forest and range management burning by federal and state land managers, private persons, political subdivisions of the state, and small businesses will not bear any direct incremental costs from the final rule changes. However, because the rule requires both better tracking of emissions, better management of smoke, and public education and notification, benefits are expected to accrue to the public, particularly to populations living close to the burns. Specifically, there is potential for incremental benefits arising from better planning and implementation of measures which increase burn efficiency, prevent wildfires, improve visibility, and reduce smoke impacts to both the general public and more sensitive segments of the population.

F/SLMs currently pay for two full-time positions to work with ADEQ at an estimated annual value of \$120,000 at ADEQ. Office space and equipment are provided by ADEQ. ADEQ currently supports one full-time position for the smoke management program. Although implementing this amended rule may require minimally increased planning and evaluation time, ADEQ does not expect to need additional employees to handle the workload. This increased workload, together with administrative costs associated with making burn information publicly available and conducting public awareness programs, are all that comprise the incremental impact to ADEQ. Thus, ADEQ judges that the costs to the agency are minimal.

The incremental impact of the changes to Article 15 is based on the rule's new requirements, and are expected to result in minimal economic impact to F/SLMs and ADEQ. For example, F/SLMs will have to provide more information about their prescribed burns, including emission reduction techniques and non-burning alternatives. They will also be encouraged to attend annual meetings for program evaluation and the establishment of annual emissions goals, and will be looked to for the development of long-term projections of future prescribed fire and wildland fire use activities. The information provided by F/SLMS will be used by ADEQ to assess visibility impairment and other air quality concerns. Additional compliance costs include those associated with the incorporation of additional emission reduction and smoke management techniques.

Together, these rule changes are expected to improve the state's smoke management program, which could lead to improvements in air quality through reduction and better management of burns. Evidence shows that exposure to criteria pollutants, either to individual pollutants such as particulate matter (PM), or collectively to a variety of pollutants, is associated with increased mortality. The positive correlation is most closely related to ambient air concentrations of PM. Human health effects of PM, for example, include premature mortality, bronchitis, new asthma cases and exacerbated asthma in existing individuals, increased hospital admissions, lower and upper respiratory illness, shortness of breath, respiratory symptoms, restricted activity days, and lost days of work. Other health effects ascribed to exposure to PM include changes in pulmonary function, chronic respiratory diseases (other than chronic bronchitis), morphological changes, neonatal mortality, cancer, altered host defense mechanisms, and non-asthma respiratory emergency room visits. Estimated economic values have been assigned to death and other adverse health effects. For example, a statistical death has been estimated to cost \$6.3 million (in year 2000 dollars), chronic bronchitis due to PM costs \$260,000 per patient, mortality life years lost is valued at \$293,000 per each life year, and work days lost due to PM is worth about \$83 per

day. (EPA, *The Benefits and Costs of the Clean Air Act 1990-2010*, Office of Air and Radiation, Office of Policy, November 1999, Table 5-1.)

F. Reduction of Impacts to Small Businesses for R18-2-602 and Article 15

These rules create minimal increased compliance costs for ADEQ to administer the open burning and prescribed forestry burning programs. ADEQ considered each of the methods prescribed in A.R.S. ● 41-1035 for reducing the impact on small businesses. Likewise, it considered each of the methods prescribed in A.R.S. ● 41-1055(B)(5)(c). For example, A.R.S. ● 41-1035 requires agencies implementing rules to reduce the impacts on small businesses by using certain methods where legal and feasible. Methods that may be used include the following: (1) exempt them from any or all rule requirements, (2) establish performance standards which could replace more costly design or operational requirements, or (3) institute reduced compliance or reporting requirements.

ADEQ cannot provide additional regulatory relief for small businesses applying for open burning permits. As the agency does not charge fees for open burning permits, ADEQ expects that R18-2-602's reporting requirement (on forms developed by ADEQ) will create minimal economic impacts to individual persons or small businesses. The rule procedures have been kept as simple and straightforward as possible. Article 15 does not directly impact small businesses as it applies primarily to public entities.

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systems; including those set forth in the operations and maintenance plan required by subsection (D)(2).

- g. All records of reports and notifications required by subsection (H).

H. Reporting

1. Within 30 days after the end of each calendar quarter, the owner or operator shall submit a data assessment report to the Director in accordance with 40 CFR Part 60, Appendix F, Procedure 1 for the continuous monitoring systems required by subsection (E).
2. The owner or operator shall submit an excess emissions and monitoring systems performance report and-or summary report form in accordance with 40 CFR § 60.7(c) to the Director semiannually for the continuous monitoring systems required by subsection (E)(1) and (E)(2). All reports shall be postmarked by the 30th day following the end of each six-month period.
3. The owner or operator shall provide the following to the Director:
 - a. Notification of commencement of construction of the project improvements and equipment authorized by Significant Permit Revision No. 53592 to comply with the operational or emission limits in this Section no later than 30 days after such date.
 - b. Semiannual progress reports on construction of any such improvements and equipment on January 1 and July 1 of each calendar year until construction is complete.
 - c. Notification of initial startup of any such improvements and equipment within 15 days after such date.

- I. Preconstruction review. This Section is determined to be Reasonably Available Control Technology (RACT) for SO₂ emissions from the operations subject to subsection (C) for purposes of minor source NSR requirements addressed in R18-2-334.

Historical Note

New Section R18-2-C1302 made by final rulemaking at 23 A.A.R. 767, on the later of the effective date of the Administrator's action approving it as part of the state implementation plan or January 1, 2018.

ARTICLE 14. CONFORMITY DETERMINATIONS**R18-2-1401. Definitions**

Terms used in this Article but not defined in this Article, Article 1 of this Chapter, or A.R.S. § 49-401.01 shall have the meaning given them by the CAA, Titles 23 and 40 U.S.C., other EPA regulations, or other USDOT regulations, in that order of priority. The following definitions and the definitions contained in Article 1 of this Chapter and in A.R.S. § 49-401.01 shall apply to this Article:

1. "ADEQ" means the Arizona Department of Environmental Quality.
2. "ADOT" means the Arizona Department of Transportation.
3. "Applicable implementation plan" is defined in § 302(q) of the CAA and means the portion (or portions) of the implementation plan, or most recent revision thereof, which has been approved under § 110, or promulgated under § 110(c), or promulgated or approved pursuant to regulations promulgated under § 301(d) and which implements the relevant requirements of the CAA.
4. "CAA" means the Clean Air Act, as amended.
5. "Cause or contribute to a new violation" for a project means either of the following:
 - a. To cause or contribute to a new violation of a standard in the area substantially affected by the project or over a region which would otherwise not be in

violation of the standard during the future period in question, if the project were not implemented.

- b. To contribute to a new violation in a manner that would increase the frequency or severity of a new violation of a standard in such area.
6. "Consultation" means that one party confers with another identified party, provides access to all appropriate information to that party needed for meaningful input, and, prior to taking any action, considers the views of that party and responds in accordance with the procedures established in R18-2-1405.
7. "Control strategy implementation plan revision" is the applicable implementation plan which contains specific strategies for controlling the emissions of and reducing ambient levels of pollutants in order to satisfy CAA requirements for demonstrations of reasonable further progress and attainment (CAA §§ 182(b)(1), 182(c)(2)(A), 182(c)(2)(B), 187(a)(7), 189(a)(1)(B), and 189(b)(1)(A); and §§ 192(a) and 192(b), for nitrogen dioxide).
8. "Control strategy period" with respect to particulate matter less than 10 microns in diameter (PM₁₀), carbon monoxide (CO), nitrogen dioxide (NO₂), or ozone precursors (volatile organic compounds (VOC) and oxides of nitrogen (NO_x)), means that period of time after EPA approves control strategy implementation plan revisions containing strategies for controlling PM₁₀, NO₂, CO, or ozone, as appropriate. This period ends when the state submits and EPA approves a request under § 107(d) of the CAA for redesignation to an attainment area.
9. "Design concept" means the type of facility identified by the project, e.g., freeway, expressway, arterial highway, grade-separated highway, reserved right-of-way rail transit, mixed traffic rail transit, exclusive busway, etc.
10. "Design scope" means the design aspects of a facility which will affect the proposed facility's impact on regional emissions, usually as they relate to vehicle or person carrying capacity and control, e.g., number of lanes or tracks to be constructed or added, length of project, signalization, access control including approximate number and location of interchanges, preferential treatment for high-occupancy vehicles, etc.
11. "EPA" means the United States Environmental Protection Agency.
12. "FHWA" means the Federal Highway Administration of USDOT.
13. "FHWA or FTA project" means any highway or transit project which is proposed to receive funding assistance and approval through the Federal-Aid Highway program or the federal mass transit program, or requires Federal Highway Administration (FHWA) or Federal Transit Administration (FTA) approval for some aspect of the project, such as connection to an interstate highway or deviation from applicable design standards on the interstate system.
14. "FTA" means the Federal Transit Administration of USDOT.
15. "Forecast period" with respect to a transportation plan means the period covered by the transportation plan pursuant to 23 CFR 450.
16. "Highway project" means an undertaking to implement or modify a highway facility or highway-related program. Such an undertaking consists of all required phases necessary for implementation. For analytical purposes, it shall be defined sufficiently to:

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- a. Connect logical termini and be of sufficient length to address environmental matters on a broad scope.
 - b. Have independent utility or significance, i.e., be usable and be a reasonable expenditure even if no additional transportation improvements in the area are made.
 - c. Not restrict consideration of alternatives for other reasonably foreseeable transportation improvements.
17. "Horizon year" means a year for which the transportation plan describes the envisioned transportation system in accordance with R18-2-1406.
 18. "Hot-spot analysis" means an estimation of likely future localized CO and PM₁₀ pollutant concentrations and a comparison of those concentrations to the national ambient air quality standards. Pollutant concentrations to be estimated should be based on the total emissions burden which may result from the implementation of a single, specific project, summed together with future background concentrations (which can be estimated using the ratio of future to current traffic multiplied by the ratio of future to current emission factors) expected in the area. The total concentration shall be estimated and analyzed at appropriate receptor locations in the area substantially affected by the project. Hot-spot analysis assesses impacts on a scale smaller than the entire nonattainment or maintenance area, including, for example, congested roadway intersections and highways or transit terminals, and uses an air quality dispersion model to determine the effects of emissions on air quality.
 19. "Incomplete data area" means any ozone nonattainment area which EPA has classified, in 40 CFR 81, as an incomplete data area.
 20. "Increase the frequency or severity of a violation" means to cause a location or region to exceed a standard more often or to cause a violation at a greater concentration than previously existed or would otherwise exist during the future period in question, if the project were not implemented.
 21. "ISTEA" means the Intermodal Surface Transportation Efficiency Act of 1991.
 22. "Local transportation agency" means a city, town, or county.
 23. "Maintenance area" means any geographic region of the United States previously designated nonattainment pursuant to the CAA Amendments of 1990 and subsequently redesignated to attainment subject to the requirement to develop a maintenance plan under § 175A of the CAA.
 24. "Maintenance period" with respect to a pollutant or pollutant precursor means that period of time beginning when a state submits and EPA approves a request under § 107(d) of the CAA for redesignation to an attainment area, and lasting for 20 years, unless the applicable implementation plan specifies that the maintenance period shall last for more than 20 years.
 25. "Metropolitan planning organization (MPO)" means the organization designated as being responsible, together with the state, for conducting the continuing, cooperative, and comprehensive planning process under 23 U.S.C. 134 and 49 U.S.C. 1607.
 26. "Milestone" means an emissions level and the date on which it is required to be achieved as described in § 182(g)(1) and § 189(c) of the CAA.
 27. "Motor vehicle emissions budget" means that portion of the total allowable emissions defined in a revision to the applicable implementation plan (or in an implementation plan revision which was endorsed by the Governor or Director of ADEQ, subject to a public hearing, and submitted to EPA, but not yet approved by EPA) for a certain date for the purpose of meeting reasonable further progress milestones or attainment or maintenance demonstrations, for any criteria pollutant or its precursors, allocated by the applicable implementation plan to highway and transit vehicles. The applicable implementation plan for an ozone nonattainment area may also designate a motor vehicle emissions budget for oxides of nitrogen (NO_x) for a reasonable further progress milestone year if the applicable implementation plan demonstrates that this NO_x budget will be achieved with measures in the implementation plan (as an implementation plan must do for VOC milestone requirements). The applicable implementation plan for an ozone nonattainment area includes a NO_x budget if NO_x reductions are being substituted for reductions in volatile organic compounds in milestone years required for reasonable further progress.
 28. "National ambient air quality standards (NAAQS)" means those standards established pursuant to § 109 of the CAA.
 29. "NEPA" means the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 et seq.).
 30. "NEPA process completion" with respect to FHWA or FTA, means the point at which there is a specific action to do any of the following:
 - a. Make a formal final determination that a project is categorically excluded.
 - b. Make a Finding of No Significant Impact.
 - c. Issue a record of decision on a Final Environmental Impact Statement under NEPA.
 31. "Nonattainment area" means any geographic region of the United States which has been designated as nonattainment under § 107 of the CAA for any pollutant for which a national ambient air quality standard exists.
 32. "Not classified area" means any carbon monoxide nonattainment area which EPA has not classified as either moderate or serious.
 33. "Phase II of the interim period" with respect to a pollutant or pollutant precursor means that period of time after December 27, 1993, lasting until the earlier of the following:
 1. Submission to EPA of the relevant control strategy implementation plan revisions which have been endorsed by the Governor or the Director of ADEQ and have been subject to a public hearing.
 2. The date that the CAA requires relevant control strategy implementation plans to be submitted to EPA, provided EPA has made a finding of the state's failure to submit any such plans and the state, MPO, and USDOT have received notice of such finding of the state's failure to submit any such plans.
 34. "Project" means a highway project or transit project.
 35. "Recipient of funds designated under 23 U.S.C. or the Federal Transit Act" means any agency at any level of state, county, or city government, including any political subdivision or MPO, that routinely receives 23 U.S.C. or Federal Transit Act funds to construct FHWA or FTA projects, operate FHWA or FTA projects or equipment, purchase equipment, or undertake other services or operations via contracts or agreements. This definition does not include private landowners or developers, or contractors or entities that are only paid for services or products created by their own employees.

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36. "Regional transportation agency" means a regional transit authority established pursuant to A.R.S. Title 28, Chapter 20 or Chapter 24, or a formal association of political subdivisions involved in regional transportation issues.
37. "Regionally significant transportation project" means a transportation project (other than an exempt project) that is on a facility which serves regional transportation needs (such as access to and from the area outside of the region, major activity centers in the region, major planned developments such as new retail malls, sports complexes, etc., or transportation terminals, as well as most terminals themselves) and would normally be included in the modeling of a metropolitan area's transportation network, including at a minimum all principal arterial highways and all fixed guideway transit facilities that offer an alternative to regional highway travel.
38. "Rural transport ozone nonattainment area" means an ozone nonattainment area that does not include, and is not adjacent to, any part of a Metropolitan Statistical Area or, where one exists, a Consolidated Metropolitan Statistical Area (as defined by the United States Bureau of the Census) and is classified under CAA § 182(h) as a rural transport area.
39. "Standard" means a national ambient air quality standard.
40. "Statewide transportation improvement program (STIP)" means a staged, multi-year, intermodal program of transportation projects covering the state, which is consistent with the statewide transportation plan and metropolitan transportation plans, and developed pursuant to 23 CFR 450.
41. "Statewide transportation plan" means the official intermodal statewide transportation plan that is developed through the statewide planning process for the state, developed pursuant to 23 CFR 450.
42. "Submarginal area" means any ozone nonattainment area which EPA has classified as submarginal in 40 CFR 81.
43. "Transit" is mass transportation by bus, rail, or other conveyance which provides general or special service to the public on a regular and continuing basis. It does not include school buses or charter or sightseeing services.
44. "Transit project" means an undertaking to implement or modify a transit facility or transit-related program, purchase transit vehicles or equipment, or provide financial assistance for transit operations. It does not include actions that are solely within the jurisdiction of local transit agencies, such as changes in routes, schedules, or fares. It may consist of several phases. For analytical purposes, it shall be defined inclusively enough to:
- Connect logical termini and be of sufficient length to address environmental matters on a broad scope.
 - Have independent utility or independent significance, i.e., be a reasonable expenditure even if no additional transportation improvements in the area are made.
 - Not restrict consideration of alternatives for other reasonably foreseeable transportation improvements.
45. "Transitional area" means any ozone nonattainment area which EPA has classified as transitional in 40 CFR 81.
46. "Transitional period" with respect to a pollutant or pollutant precursor means that period of time which begins after submission to EPA of the relevant control strategy implementation plan which has been endorsed by the Governor or Director of ADEQ and has been subject to a public hearing. The transitional period lasts until EPA takes final approval or disapproval action on the control strategy implementation plan submission or finds it to be incomplete. The precise beginning and end of the transitional period is defined in R18-2-1428.
47. "Transportation control measure (TCM)" means any measure that is specifically identified and committed to in the applicable implementation plan that is either one of the types listed in § 108 of the CAA, or any other measure for the purpose of reducing emissions or concentrations of air pollutants from transportation sources by reducing vehicle use or changing traffic flow or congestion conditions. Notwithstanding the above, vehicle technology-based, fuel-based, and maintenance-based measures which control the emissions from vehicles under fixed traffic conditions are not TCMs for the purposes of this rule.
48. "Transportation improvement program (TIP)" means a staged, multi-year, intermodal program of transportation projects covering a metropolitan planning area which is consistent with the metropolitan transportation plan and developed pursuant to 23 CFR 450.
49. "Transportation plan" means the official intermodal metropolitan transportation plan that is developed through the metropolitan planning process for the metropolitan planning area, developed pursuant to 23 CFR 450.
50. "Transportation project" means a highway project or a transit project.
51. "USDOT" means the United States Department of Transportation.
52. "VMT" means the number of vehicle miles traveled.

Historical Note

Adopted effective June 15, 1995 (Supp. 95-2).

R18-2-1402. Applicability

- A.** Except as provided for in subsection (F) or R18-2-1434, conformity determinations are required for all of the following:
- The adoption, acceptance, approval, or support of transportation plans developed pursuant to 23 CFR 450 or 49 CFR 613 by an MPO or USDOT.
 - The adoption, acceptance, approval, or support of TIPs developed pursuant to 23 CFR 450 or 49 CFR 613 by an MPO or USDOT.
 - The approval, funding, or implementation of FHWA or FTA projects.
- B.** Conformity determinations are not required under this Article for individual projects which are not FHWA or FTA projects. However, R18-2-1429 applies to such projects if they are regionally significant.
- C.** The provisions of this Article shall apply in all nonattainment and maintenance areas for transportation-related criteria pollutants for which the area is designated nonattainment or has a maintenance plan.
- D.** The provisions of this Article apply with respect to emissions of the following criteria pollutants: ozone, carbon monoxide, nitrogen dioxide, and particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM₁₀).
- E.** The provisions of this Article apply with respect to emissions of the following precursor pollutants:
- Volatile organic compounds and nitrogen oxides in ozone areas (unless the Administrator determines under § 182(f) of the CAA that additional reductions of NO_x would not contribute to attainment).
 - Nitrogen oxides in nitrogen dioxide areas.
 - Volatile organic compounds, nitrogen oxides, and PM₁₀ in PM₁₀ areas if either of the following apply:
 - During the interim period, the EPA Regional Administrator or the Director of ADEQ has made a

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finding (including a finding in an applicable implementation plan or a submitted implementation plan revision) that transportation-related precursor emissions within the nonattainment area are a significant contributor to the PM₁₀ nonattainment problem and has so notified ADOT or the MPO where one exists and USDOT.

- b. During the transitional, control strategy, and maintenance periods, the applicable implementation plan or implementation plan submission establishes a budget for such emissions as part of the reasonable further progress, attainment, or maintenance strategy.
- F. Projects subject to this Article for which the NEPA process and a conformity determination have been completed by FHWA or FTA may proceed toward implementation without further conformity determinations if one of the following major steps has occurred within the most recent three-year period: NEPA process completion; formal start of final design; acquisition of a significant portion of the right-of-way; or approval of the plans, specifications, and estimates. All phases of such projects which were considered in the conformity determination are also included, if those phases were for the purpose of funding, final design, right-of-way acquisition, construction, or any combination of these phases.
- G. A new conformity determination for the project will be required if there is a significant change in project design concept and scope, if a supplemental environmental document for air quality purposes is initiated, or if no major steps to advance the project have occurred within the most recent three-year period.

Historical Note

Adopted effective June 15, 1995 (Supp. 95-2).

R18-2-1403. Priority

When assisting or approving any action with air quality-related consequences, FHWA and FTA shall give priority to the implementation of those transportation portions of an applicable implementation plan prepared to attain and maintain the NAAQS. This priority shall be consistent with statutory requirements for allocation of funds among states or other jurisdictions.

Historical Note

Adopted effective June 15, 1995 (Supp. 95-2).

R18-2-1404. Frequency of Conformity Determinations

- A. Conformity determinations and conformity redeterminations for transportation plans, TIPs, and FHWA or FTA projects shall be made according to the requirements of this Section and the applicable implementation plan.
- B. Each new transportation plan shall be found to conform before the transportation plan is approved by the MPO or accepted by USDOT.
- C. All transportation plan revisions shall be found to conform before the transportation plan revisions are approved by the MPO or accepted by USDOT, unless the revision merely adds or deletes exempt projects listed in R18-2-1434 and has been made in accordance with the notification provisions contained in R18-2-1405. The conformity determination shall be based on the transportation plan and the revision taken as a whole.
- D. An existing conformity determination shall lapse unless conformity of existing transportation plans is redetermined:
 - 1. By May 25, 1995, unless previously redetermined consistent with 40 CFR 51, subpart T.
 - 2. Within 18 months after EPA approval of an implementation plan revision which either:
 - a. Establishes or revises a transportation-related emissions budget (as required by CAA §§ 175A(a), 182(b)(1), 182(c)(2)(A), 182(c)(2)(B), 187(a)(7), 189(a)(1)(B), and 189(b)(1)(A); and §§ 192(a) and 192(b), for nitrogen dioxide); or
 - b. Adds, deletes, or changes TCMs.

- 3. Within 18 months after EPA promulgation of an implementation plan which establishes or revises a transportation-related emissions budget or adds, deletes, or changes TCMs.
- E. In any case, conformity determinations shall be made no less frequently than every three years, or the existing conformity determination will lapse.
- F. A new TIP shall be found to conform before the TIP is approved by the MPO or accepted by USDOT.
- G. A TIP amendment requires a new conformity determination for the entire TIP before the amendment is approved by the MPO or accepted by USDOT, unless the amendment merely adds or deletes exempt projects listed in R18-2-1434 and has been made in accordance with the notification procedures under R18-2-1405.
- H. After an MPO adopts a new or revised transportation plan, TIP conformity shall be redetermined by the MPO and USDOT within six months from the date of adoption of the plan, unless the new or revised plan merely adds or deletes exempt projects listed in R18-2-1434. Otherwise, the existing conformity determination for the TIP shall lapse.
- I. In any case, TIP conformity determinations shall be made no less frequently than every three years or the existing TIP conformity determination shall lapse.
- J. FHWA or FTA projects shall be found to conform before they are adopted, accepted, approved, or funded. Conformity shall be redetermined for any FHWA or FTA project if none of the following major steps has occurred within the most recent three-year period:
 - 1. NEPA process completion,
 - 2. Start of final design,
 - 3. Acquisition of a significant portion of the right-of-way,
 - 4. Approval of the plans, specifications, and estimates.

Historical Note

Adopted effective June 15, 1995 (Supp. 95-2).

R18-2-1405. Consultation

- A. Consultation procedures as described in this Section shall be undertaken by all of the following entities and shall include the public and affected local and regional transportation agencies in preparing for and making conformity determinations and in developing applicable implementation plans:
 - 1. An MPO where one exists.
 - 2. The Arizona Department of Transportation (ADOT).
 - 3. The United States Department of Transportation (USDOT).
 - 4. The Arizona Department of Environmental Quality (ADEQ).
 - 5. The county air pollution control agency established pursuant to A.R.S. Title 49 where one exists.
 - 6. The United States Environmental Protection Agency (EPA).
- B. The following elements shall be used to implement the consultation processes under subsection (M), with the exception of subsection (M)(8), and under subsection (N), with the exception of subsections (N)(2) and (N)(3), and shall include all affected agencies and interested members of the public, and may be conducted at separate times or in combination:

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1. Providing to the affected agencies and interested members of the public information describing the upcoming decision process,
 2. Distributing or providing access to draft documents,
 3. Providing an opportunity for informal question and answer on the draft document or proposed decision,
 4. Providing an opportunity for formal written comment,
 5. Writing and distributing both a response to comments and the final document or decision.
- C.** An MPO where one exists, ADEQ, a county air pollution control agency where one exists, ADOT, a transit authority where one exists, and any local transportation agency shall undertake a consultation process in accordance with this Section with each other, with the local or regional offices of EPA, FHWA and FTA, with affected regional transportation agencies, and with the public on the development of the following as described in subsections (D) through (G):
1. The implementation plan, including the emission budget and list of TCMs in the applicable implementation plan;
 2. The unified planning work program under 23 CFR § 450.314;
 3. The transportation plan and TIP;
 4. The statewide transportation plan and STIP;
 5. Any revisions to the preceding documents;
 6. All transportation conformity determinations.
- D.** ADEQ, or the MPO in a county having a population greater than 250,000 persons, shall be the lead agency responsible for preparing an implementation plan, the associated emission budgets, and the list of TCMs in the plan. The lead agency shall also be responsible for assuring the adequacy of the consultation process. The concurrence of ADEQ on each implementation plan is required before ADEQ adopts the plan and transmits it to EPA for inclusion in the state implementation plan pursuant to A.R.S. § 49-406.
- E.** ADOT, or the MPO where one exists, shall be the lead agency responsible for preparing the final document or decision and for assuring the adequacy of the consultation process with respect to the development of the transportation plan and the TIP. The MPO shall be the lead agency responsible for preparing the final document or decision and for assuring the adequacy of the consultation process with respect to the development of the unified planning work program under 23 CFR 450.314.
- F.** ADOT shall be the lead agency responsible for preparing the final document or decision and for assuring the adequacy of the consultation process with respect to the development of the statewide transportation plan and the STIP.
- G.** ADOT, or the MPO where one exists, shall be the lead agency responsible for preparing the final document or decision and for assuring the adequacy of the consultation process with respect to determinations of transportation conformity, except that the entity authorized to adopt or approve a project shall be the lead agency responsible for project-level conformity determinations for projects outside of the transportation plan or TIP and shall assure the adequacy of the consultation process.
- H.** Each lead agency described in subsections (D) through (G) shall:
1. Confer with all other agencies having an interest in the document or decision to be developed;
 2. Provide access to all information needed for meaningful input;
 3. Solicit early and continuing input from those agencies;
 4. Conduct the public consultation process described in subsection (P);
 5. Assure policy-level contact with agencies;
 6. With the exception of notifications pursuant to subsection (M)(8), prior to taking any action required pursuant to subsections (D) through (G), consider the views of each agency and the public and respond to significant comments in a timely, substantive written manner prior to taking any final action and assure that such views and written response are made part of the record of any action.
- I.** FHWA and FTA shall be responsible for assuring timely action on final findings of conformity for transportation plans, TIPs, and federally funded projects, including the basis for those findings, after consulting with other agencies as provided in this Section. FHWA and FTA shall also be responsible for providing guidance on conformity and the transportation planning process to agencies in consultation. FHWA and FTA may rely on the consultation process initiated by ADOT or the MPO where one exists and shall not be required to duplicate that process.
- J.** EPA shall be responsible for reviewing and approving updated motor vehicle emissions factors and providing guidance on conformity criteria and procedures to agencies in consultation.
- K.** Each lead agency subject to a consultation process under this Section, including any federal agency, shall provide or notice the availability of each final document that is the product of the consultation process, together with all supporting information, to each other agency and members of the public that have participated in the consultation process within 15 days of adopting or approving the document or making the determination. An agency may supply a checklist of available supporting information, which other participating agencies or the public may use to request all or part of the supporting information, in lieu of generally distributing all supporting information.
- L.** A meeting that is scheduled or required for another purpose may be used for the purposes of consultation if the conformity consultation purpose is identified in the public notice for the meeting.
- M.** A consultation process involving an MPO where one exists, ADEQ, a county air pollution control agency where one exists, ADOT, a transit authority where one exists, local and regional transportation agencies, EPA, USDOT, and the public shall be undertaken for the following:
1. Evaluating and choosing each model and associated methods and assumptions to be used in hot-spot analyses and regional emissions analyses including vehicle miles traveled (VMT) forecasting. The consultation process pursuant to this subsection shall be initiated by ADOT or the MPO where one exists.
 2. Determining whether the responsible agency identified in R18-2-1433 has demonstrated that the requirements of R18-2-1416, R18-2-1418 and R18-2-1419 are satisfied without a particular mitigation or control measure. The consultation process pursuant to this subsection shall be initiated by the responsible agency.
 3. Making a determination, as required by R18-2-1429(C)(2), whether the project is included in the regional emissions analysis supporting the currently conforming TIP's conformity determination, even if the project is not included in the TIP for the purposes of MPO project selection or endorsement, and whether the project's design concept and scope have changed significantly from those which were included in the regional emissions analysis, or in a manner which would significantly impact use of the facility. The consultation process pursuant to this subsection shall be initiated by the MPO. In nonattainment areas where no MPO exists, ADOT shall initiate the consultation process for making a deter-

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mination, as required by R18-2-1429(C)(2), whether a project that is outside of a TIP is included in the regional emissions analysis, and whether the project's design concept and scope have changed significantly from those which were included in the regional emissions analysis, or in a manner which would significantly impact use of the facility.

4. Determining pursuant to subsection (R) which minor arterials and other transportation projects should be considered "regionally significant" for the purposes of regional emissions analysis and which projects should be considered to have a significant change in design concept and scope from the transportation plan or TIP. The consultation process pursuant to this subsection shall be initiated by the MPO. In nonattainment areas where no MPO exists, ADOT shall initiate the consultation process for determining pursuant to subsection (R) which minor arterials and other transportation projects should be considered "regionally significant" for the purposes of regional emissions analysis.
 5. Evaluating whether exempt projects as described in R18-2-1434 and R18-2-1435 should be treated as non-exempt in cases where potential adverse emissions impacts may exist for any reason. The consultation process pursuant to this subsection shall be initiated by ADOT or the MPO where one exists.
 6. Making a determination, as required by R18-2-1413, whether past obstacles to implementation of TCMs which are behind the schedule established in the applicable implementation plan have been identified and are being overcome, and whether state and local agencies with influence over approvals or funding for TCMs are giving maximum priority to approval or funding for TCMs. This consultation process shall also consider whether delays in TCM implementation necessitate revisions to the applicable implementation plan to remove TCMs or to substitute TCMs or other emission reduction measures. The consultation process pursuant to this subsection shall be initiated by ADOT or the MPO where one exists.
 7. Identifying, as required by R18-2-1431, projects located at sites in PM₁₀ nonattainment areas which have vehicle and roadway emission and dispersion characteristics which are essentially identical to those at sites which have violations verified by monitoring, and therefore require quantitative PM₁₀ hot-spot analysis. The consultation process pursuant to this subsection shall be initiated by ADOT or the MPO where one exists.
 8. Notification of transportation plan or TIP revisions or amendments which merely add or delete exempt projects listed in R18-2-1434. Notice shall be provided by the MPO and need not be provided prior to final action. Notice shall be provided by ADOT for revisions and amendments affecting the state transportation plan and the state TIP. The public involvement process described in subsection (P) is not required for the purposes of this subsection.
 9. Project-level conformity determinations pursuant to R18-2-1416. The consultation process pursuant to this subsection shall be initiated by the recipient of the funds designated under 23 U.S.C. or the Federal Transit Act.
- N.** A consultation process involving the MPO, ADEQ, a county air pollution control agency where one exists, ADOT, appropriate political subdivisions, regional transportation agencies, if any, and the public shall be undertaken for the following:
1. Evaluating events which will trigger new conformity determinations in addition to those triggering events established in R18-2-1404 and including any changes in planning assumptions that may trigger a new conformity determination. The consultation process pursuant to this subsection shall be initiated by ADOT or the MPO where one exists.
 2. Consulting on emissions analysis for transportation activities which cross the borders of MPOs or nonattainment areas or air basins. The consultation process pursuant to this subsection shall be initiated by ADOT or the MPO where one exists. The public involvement process described in subsection (P) is not required for the purposes of this subsection.
 3. Where the metropolitan planning area does not include the entire nonattainment or maintenance area, a consultative planning and analysis for purposes of determining conformity of all projects outside the metropolitan area and within the nonattainment or maintenance area. The consultation process pursuant to this subsection shall be initiated by ADOT. The public involvement process described in subsection (P) is not required for the purposes of this subsection.
 4. The design, schedule, and funding of research and data collection efforts and regional transportation model development. The consultation process pursuant to this subsection shall be initiated by ADOT or the MPO where one exists.
 5. Determining that a conforming project approved with mitigation no longer requires mitigation. The consultation process pursuant to this subsection shall be initiated by ADOT or the MPO where one exists.
- O.** The following consultation processes involve recipients of funds designated under 23 U.S.C. or the Federal Transit Act:
1. A consultation process involving the MPO, ADEQ, a county air pollution control agency where one exists, ADOT, recipients of funds designated under 23 U.S.C. or the Federal Transit Act and any agency created under state law that sponsors or approves transportation projects shall be undertaken to assure that plans for construction of regionally significant projects which are not FHWA or FTA projects, including projects for which alternative locations, design concept or scope, or the no-build option are still being considered, are disclosed as soon as practicable to ADOT or the MPO where one exists, so as to assure that any significant changes to the design concept or scope of those plans are disclosed as soon as practicable. The political subdivision having authority to adopt or approve a regionally significant transportation project, and any agency that becomes aware of any such project through applications for approval, permitting, funding, or otherwise shall disclose such project to ADOT or the MPO if one exists as soon as practicable. To help assure timely disclosure, the political subdivision having authority to adopt or approve any potential regionally significant transportation project shall disclose to ADOT or the MPO on a schedule prescribed by ADOT or the MPO, whichever is appropriate, each project for which alternatives have been identified through the NEPA process and, in particular, any preferred alternative that may be a regionally significant project. The consultation process shall include assuming the location, design concept, and scope of the project, where the sponsor has not yet decided these features, in sufficient detail to allow ADOT or the MPO to perform a regional emissions analysis. The consultation process pursuant to this subsection shall be initiated by ADOT or the MPO where one exists.

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2. A consultation process involving the MPO, ADEQ, a county air pollution control agency where one exists, ADOT, recipients of funds designated under 23 U.S.C. or the Federal Transit Act, any agency created under state law that sponsors or approves transportation projects, and the public shall be undertaken for the development of procedures as described in R18-2-1429. The consultation process pursuant to this subsection shall be initiated by ADOT or the MPO where one exists.
- P.** Public involvement processes shall be conducted according to the requirements of this subsection.
1. ADOT or the MPO, where one exists, when making conformity determinations on transportation plans, programs, and projects shall establish and continuously implement a proactive public involvement process which provides opportunity for public review and comment prior to taking formal action on a conformity determination for all transportation plans and TIPs, that meets the following minimum requirements:
 - a. Includes a process that provides complete information, timely public notice, full public access to key decisions and supports early and continuing involvement of the public in developing plans and TIPs.
 - b. Requires a minimum public comment period of 45 days before the public involvement process is initially adopted or revised.
 - c. Provides timely information about transportation issues and processes to citizens, affected public agencies, representatives of transportation agency employees, private providers of transportation, other interested parties and segments of the community affected by transportation plans, programs, and projects, including but not limited to central city and other local jurisdiction concerns.
 - d. Provides reasonable public access to technical and policy information used in the development of plans and TIPs and open public meetings where matters related to the federal-aid highway and transit programs are being considered.
 - e. Requires adequate public notice of public involvement activities and time for public review and comment at key decision points, including, but not limited to, approval of plans and TIPs and approval of changes in plans and TIPs. In nonattainment areas classified as serious and above, the comment period shall be at least 30 days for the plan, TIP, and major amendments. Public notice shall include mailing of notice to a list of all persons who have requested notice of actions covered by this Article.
 - f. Demonstrates explicit consideration and response to public input received during the planning and program development processes.
 - g. Seeks out and considers the needs of those traditionally underserved by existing transportation systems, including but not limited to low-income and minority households.
 - h. When significant written and oral comments are received on a draft transportation plan or TIP, including the financial plan, as a result of the public involvement process or the consultation process required by this Section, a summary, analysis, and report on the disposition of comments shall be made part of the final plan and TIP.
 - i. If the final transportation plan or TIP differs significantly from the one which was made available for public comment by the MPO and it raises new material issues which interested parties could not reasonably have foreseen from the public involvement efforts, an additional opportunity for public comment on the revised plan or TIP shall be made available.
 - j. ADOT or the MPO where one exists shall specifically address in writing all public comments that known plans for a regionally significant transportation project which is not receiving FHWA or FTA funding or approval have not been properly reflected in the emissions analysis supporting a proposed conformity finding for a transportation plan or TIP.
 - k. Public involvement processes shall be periodically reviewed by ADOT or the MPO in terms of their effectiveness in assuring that the process provides full and open access to all.
 1. These procedures will be reviewed by the FHWA and the FTA during certification reviews for TMAs, and as otherwise necessary for all MPOs, to assure that full and open access is provided to MPO decisionmaking processes.
 - m. Metropolitan public involvement processes shall be coordinated with statewide public involvement processes wherever possible to enhance public consideration of the issues, plans, and programs and to reduce redundancies and costs.
 2. Local and regional transportation agencies when making conformity determinations on regionally significant transportation projects shall establish and implement a public involvement process which meets, at a minimum, the following requirements:
 - a. Provides to the affected agencies and interested members of the public information describing the upcoming decision process.
 - b. Distributes or provides access to draft documents and all information needed for meaningful input.
 - c. Solicits early and continuing input from interested agencies and the public.
 - d. Provides an opportunity for informal question and answer on the draft document or proposed decision.
 - e. Provides an opportunity for formal written comment.
 - f. Provides for writing and distributing both a response to comments and the final document or decision. The response to comments shall consider the views of each agency and the public. The response to comments shall be made in a timely, substantive written manner prior to taking any final action and shall be made part of the record of any action.
- Q.** Any conflict among state agencies or between state agencies and an MPO shall be escalated to the Governor if the conflict cannot be resolved by the directors of the involved agencies. In the first instance, such entities shall make every effort to resolve any differences, including personal meetings between the directors of such entities or their policy-level representatives, to the extent possible. Within 14 calendar days after ADOT or the MPO has notified ADEQ of its decision, ADEQ may appeal a proposed determination of conformity, or other policy decision under this Article, to the Governor. ADEQ must provide notice of any appeal under this subsection to ADOT or the MPO. If ADEQ does not appeal to the Governor within 14 days, ADOT or the MPO may proceed with the final determination or decision. If ADEQ appeals to the Governor, the final conformity determination or policy decision shall have the concurrence of the Governor. The Governor may delegate to another official or agency within the state the role of

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hearing any appeal under this subsection and of deciding whether to concur in the determination or decision but may not delegate these functions to the director or staff of ADEQ, to any local air quality agency, to ADOT, to any state transportation commission or board, to an MPO, or to any agency that has responsibility for any of these functions.

R. The following procedures shall govern the consultation process regarding regionally significant transportation projects as defined in R18-2-1401(37):

1. By September 1, 1995, ADOT or the MPO where one exists shall develop and make available, for each nonattainment or maintenance area, consistent with A.R.S. § 49-408(A), the following:
 - a. A map of the highway or transit facilities in the nonattainment or maintenance area that serve regional transportation needs.
 - b. Guidance on which undertakings to implement or modify a highway facility are not transportation projects as defined in this Article, because they are not of sufficient length to address environmental matters on a broad scope.
 - c. Guidance on which types of transportation projects are normally included in the regional transportation model.
2. The map and guidance described in subsection (R)(1) shall be produced only after consultation with ADEQ, a county air pollution control agency where one exists, ADOT, a transit authority where one exists, local and regional transportation agencies, and the public. The map developed pursuant to subsection (R)(1) shall be updated prior to the commencement of the next TIP or STIP development cycle, unless no changes have occurred. The guidance developed pursuant to subsection (R)(3) shall be revised as necessary to reflect changes in the regional transportation model.
3. ADOT or the MPO where one exists shall develop and initiate the consultation process described in subsection (H) for a proposed list of transportation projects to be considered regionally significant. The consultation process shall include the MPO where one exists, ADEQ, a county air pollution control agency where one exists, ADOT, a transit authority where one exists, local and regional transportation agencies, EPA, USDOT, and the public. The list shall include information supporting the proposed classification.
4. In determining whether a facility serves regional transportation needs, ADOT or the MPO where one exists shall consider at a minimum whether the facility:
 - a. Would be classified as a principal arterial based on average daily traffic or other factors, if not for limitations that the USDOT places on the percentage of streets that can be so classified.
 - b. For all other roadways, whether the facility:
 - i. Serves regional mobility needs, as opposed to local access.
 - ii. Carries regional traffic from one principal arterial to another.
 - iii. Is a modification that expands a facility such that it would serve regional transportation needs.
5. For the purposes of this Article, a street with a lower classification than a collector street, as specified in the most recent federal classification map for the region, does not serve regional transportation needs.

6. None of the following attributes, by itself, shall require a transportation project to be included in the modeling of a metropolitan area's transportation network:

- a. The connection of a facility that does not serve regional transportation needs to a facility that does serve regional transportation needs.
- b. The addition or modification of a lane other than a through lane.

S. An agency having a role or responsibility under this Section may delegate that role or responsibility to another entity pursuant to the applicable state law but shall notify all other parties to the consultation process of this fact when the delegation occurs and shall also provide to the other parties the name, address, and telephone number of one or more contact persons representing the entity that is accepting the delegated role or responsibility.

T. The provisions of this Section apply only to TIP and STIP planning cycles beginning with the cycles next following the effective date of this Section. The provisions of 40 CFR 51, Subpart T, continue to apply to all TIP and STIP planning cycles in progress at the time of the effective date of this Section. The provisions of this Section apply to consultation on projects and TIP amendments as of the effective date of this Section.

Historical Note

Adopted effective June 15, 1995 (Supp. 95-2).

R18-2-1406. Content of Transportation Plans

- A. For transportation plans adopted after January 1, 1995, in serious, severe, or extreme ozone nonattainment areas and in serious carbon monoxide nonattainment areas, the following shall apply:
1. The transportation plan shall specifically describe the transportation system envisioned for certain future years which shall be called horizon years.
 2. The agency or organization developing the transportation plan, after consultation pursuant to R18-2-1405, may choose any years to be horizon years, subject to the following restrictions:
 - a. Horizon years may be no more than 10 years apart.
 - b. The first horizon year may be no more than 10 years from the base year used to validate the transportation demand planning model.
 - c. If the attainment year is in the time span of the transportation plan, the attainment year shall be a horizon year.
 - d. The last horizon year shall be the last year of the transportation plan's forecast period.
 3. For these horizon years all of the following apply:
 - a. The transportation plan shall quantify and document the demographic and employment factors influencing expected transportation demand, including land-use forecasts, in accordance with implementation plan provisions and R18-2-1405.
 - b. The highway and transit system shall be described in terms of the regionally significant additions or modifications to the existing transportation network which the transportation plan envisions to be operational in the horizon years. Additions and modifications to the highway network shall be sufficiently identified to indicate intersections with existing regionally significant facilities and to determine their effect on route options between transportation analysis zones. Each added or modified highway segment shall also be sufficiently identified in terms of its design concept and design scope to allow mod-

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eling of travel times under various traffic volumes, consistent with the modeling methods for area-wide transportation analysis in use by the MPO. Transit facilities, equipment, and services envisioned for the future shall be identified in terms of design concept, design scope, and operating policies sufficiently to allow modeling of their transit ridership. The description of additions and modifications to the transportation network shall also be sufficiently specific to show that there is a reasonable relationship between expected land use and the envisioned transportation system.

- c. Other future transportation policies, requirements, services, and activities, including intermodal activities, shall be described.
- B. Ozone or CO nonattainment areas which are reclassified from moderate to serious shall meet the requirements of subsection (A) within two years from the date of reclassification.
- C. Transportation plans for other areas shall meet the requirements of subsection (A) at least to the extent it has been the previous practice of the MPO to prepare plans which meet those requirements. Otherwise, transportation plans shall describe the transportation system envisioned for the future specifically enough to allow determination of conformity according to the criteria and procedures of R18-2-1409 through R18-2-1427.
- D. The requirements of this Section supplement other requirements of applicable law or regulation governing the format or content of transportation plans.

Historical Note

Adopted effective June 15, 1995 (Supp. 95-2).

R18-2-1407. Relationship of Transportation Plan and TIP Conformity with the NEPA Process

The degree of specificity required in the transportation plan and the specific travel network assumed for air quality modeling do not preclude the consideration of alternatives in the NEPA process or other project development studies. Should the NEPA process result in a project with design concept and scope significantly different from that in the transportation plan or TIP, the project shall meet the criteria in R18-2-1409 through R18-2-1427 for projects not from a TIP before NEPA process completion.

Historical Note

Adopted effective June 15, 1995 (Supp. 95-2).

R18-2-1408. Fiscal Constraints for Transportation Plans and TIPs

Transportation plans and TIPs shall demonstrate that they are fiscally constrained consistent with USDOT's metropolitan planning regulations at 23 CFR 450 in order to be found in conformity.

Historical Note

Adopted effective June 15, 1995 (Supp. 95-2).

R18-2-1409. Criteria and Procedures for Determining Conformity of Transportation Plans, Programs, and Projects: General

- A. In order to be found to conform, each transportation plan, program, and FHWA or FTA project shall satisfy the applicable criteria and procedures in R18-2-1410 through R18-2-1427 as listed in Table 1 of this Section and shall comply with all applicable conformity requirements of implementation plans and of court orders for the area which pertain specifically to conformity determination requirements. The criteria for making conformity determinations differ based on the action under review (transportation plans, TIPs, and FHWA or FTA projects), the time period in which the conformity determination is made, and the relevant pollutant.

- B. The following table indicates the criteria and procedures in R18-2-1410 through R18-2-1427 which apply for each action in each time period:

Table 1. Conformity Criteria

DURING ALL PERIODS

Action	Criteria
Transportation Plan	R18-2-1410, R18-2-1411, R18-2-1412, R18-2-1413(B)
TIP	R18-2-1410, R18-2-1411, R18-2-1412, R18-2-1413(C)
Project (from a conforming plan and TIP)	R18-2-1410, R18-2-1411, R18-2-1412, R18-2-1414, R18-2-1415, R18-2-1416, R18-2-1417
Project (not from a conforming plan and TIP)	R18-2-1410, R18-2-1411, R18-2-1412, R18-2-1413(D), R18-2-1414, R18-2-1416, R18-2-1417

PHASE II OF THE INTERIM PERIOD

Action	Criteria
Transportation Plan	R18-2-1422, R18-2-1425
TIP	R18-2-1423, R18-2-1426
Project (from a conforming plan and TIP)	R18-2-1421
Project (not from a conforming plan and TIP)	R18-2-1421, R18-2-1424, R18-2-1427

TRANSITIONAL PERIOD

Action	Criteria
Transportation Plan	R18-2-1418, R18-2-1422, R18-2-1425
TIP	R18-2-1419, R18-2-1423, R18-2-1426
Project (from a conforming plan and TIP)	R18-2-1421
Project (not from a conforming plan and TIP)	R18-2-1420, R18-2-1421, R18-2-1424, R18-2-1427

CONTROL STRATEGY AND MAINTENANCE PERIODS

Action	Criteria
Transportation Plan	R18-2-1418
TIP	R18-2-1419
Project (from a conforming plan and TIP)	No additional criteria
Project (not from a conforming plan and TIP)	R18-2-1420

- R18-2-1410. The conformity determination must be based on the latest planning assumptions.
- R18-2-1411. The conformity determination must be based on the latest emission estimation model available.
- R18-2-1412. The MPO must make the conformity determination according to the consultation procedures of this rule and the implementation plan revision required by 40 CFR 51.396.

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- R18-2-1413. The transportation plan, TIP, or FHWA or FTA project which is not from a conforming plan and TIP must provide for the timely implementation of TCMs from the applicable implementation plan.
- R18-2-1414. There must be a currently conforming transportation plan and currently conforming TIP at the time of project approval.
- R18-2-1415. The project must come from a conforming transportation plan and program.
- R18-2-1416. The FHWA or FTA project must not cause or contribute to any new localized CO or PM₁₀ violations or increase the frequency or severity of any existing CO or PM₁₀ violations in CO and PM₁₀ nonattainment and maintenance areas.
- R18-2-1417. The FHWA or FTA project must comply with PM₁₀ control measures in the applicable implementation plan.
- R18-2-1418. The transportation plan must be consistent with the motor vehicle emissions budget(s) in the applicable implementation plan or implementation plan submission.
- R18-2-1419. The TIP must be consistent with the motor vehicle emissions budget(s) in the applicable implementation plan or implementation plan submission.
- R18-2-1420. The project which is not from a conforming transportation plan and conforming TIP must be consistent with the motor vehicle emissions budget(s) in the applicable implementation plan or implementation plan submission.
- R18-2-1421. The FHWA or FTA project must eliminate or reduce the severity and number of localized CO violations in the area substantially affected by the project (in CO nonattainment areas).
- R18-2-1422. The transportation plan must contribute to emissions reductions in ozone and CO nonattainment areas.
- R18-2-1423. The TIP must contribute to emissions reductions in ozone and CO nonattainment areas.
- R18-2-1424. The project which is not from a conforming transportation plan and TIP must contribute to emissions reductions in ozone and CO nonattainment areas.
- R18-2-1425. The transportation plan must contribute to emission reductions or must not increase emissions in PM₁₀ and NO₂ nonattainment areas.
- R18-2-1426. The TIP must contribute to emission reductions or must not increase emissions in PM₁₀ and NO₂ nonattainment areas.
- R18-2-1427. The project which is not from a conforming transportation plan and TIP must contribute to emission reductions or must not increase emissions in PM₁₀ and NO₂ nonattainment areas.

Historical Note

Adopted effective June 15, 1995 (Supp. 95-2).

R18-2-1410. Criteria and Procedures: Latest Planning Assumptions

- A. During all periods the conformity determination, with respect to all other applicable criteria in R18-2-1411 through R18-2-1427, shall be based upon the most recent complete planning assumptions in force at the time of the conformity determination. The conformity determination shall satisfy the requirements of subsections (B) through (F).
- B. Assumptions, including vehicle miles traveled per capita or per household, trip generation per household, vehicle occupancy, household size, vehicle fleet mix, vehicle ownership, and the geographic distribution of population growth shall be derived from the estimates of current and future population, employment, travel, and congestion most recently used by ADOT or the MPO where one exists. Population estimates shall be consistent with the estimates developed by the Arizona Department of Economic Security pursuant to A.R.S. §

41-1954(A). The conformity determination shall also be based on the latest assumptions about current and future background concentrations.

- C. The conformity determination for each transportation plan and TIP shall discuss how transit operating policies (including fares and service levels) and assumed transit ridership have changed since the previous conformity determination.
- D. The conformity determination shall include reasonable assumptions about transit service and increases in transit fares and road and bridge tolls over time.
- E. The conformity determination shall use the latest existing information regarding the effectiveness of the TCMs which have already been implemented.
- F. Key assumptions shall be specified and included in the draft documents and supporting materials used for the interagency and public consultation required by R18-2-1405.

Historical Note

Adopted effective June 15, 1995 (Supp. 95-2).

R18-2-1411. Criteria and Procedures: Latest Emissions Model

- A. During all periods the conformity determination shall be based on the latest emission estimation model available. This criterion is satisfied if the most current version of the motor vehicle emissions model specified by EPA for use in the preparation or revision of implementation plans in that state or area is used for the conformity analysis. Where EMFAC is the motor vehicle emissions model used in preparing or revising the applicable implementation plan, new versions shall be approved by EPA before they are used in the conformity analysis.
- B. Conformity analyses for which the emissions analysis was begun during the grace period or before the Federal Register notice of availability of the latest emission model, or during any grace period announced in such notice, may continue to use the previous version of the model for transportation plans and TIPs. The previous model may also be used for projects if the analysis was begun during the grace period or before the Federal Register notice of availability, provided no more than three years have passed since the draft environmental document was issued.

Historical Note

Adopted effective June 15, 1995 (Supp. 95-2).

R18-2-1412. Criteria and Procedures: Consultation

All conformity determinations shall be made according to the consultation procedures in R18-2-1405. This criterion applies during all periods. Until the implementation plan revision required by 40 CFR 51.396 is approved by EPA, the conformity determination shall be made according to the procedures in R18-2-1405. Once the implementation plan revision has been approved by EPA, this criterion is satisfied if the conformity determination is made consistent with the implementation plan's consultation requirements.

Historical Note

Adopted effective June 15, 1995 (Supp. 95-2).

R18-2-1413. Criteria and Procedures: Timely Implementation of TCMs

- A. During all periods the transportation plan, TIP, or FHWA, or FTA project which is not from a conforming plan and TIP shall provide for the timely implementation of TCMs from the applicable implementation plan.
- B. For transportation plans, this criterion is satisfied if the following two conditions are met:
1. The transportation plan, in describing the envisioned future transportation system, provides for the timely completion or implementation of all TCMs in the applicable

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implementation plan which are eligible for funding under 23 U.S.C. or the Federal Transit Act, consistent with schedules included in the applicable implementation plan.

2. Nothing in the transportation plan interferes with the implementation of any TCM in the applicable implementation plan.
- C. For TIPs, this criterion is satisfied if all of the following conditions are met:
1. An examination of the specific steps and funding source needed to fully implement each TCM indicates that TCMs which are eligible for funding under 23 U.S.C. or the Federal Transit Act are on or ahead of the schedule established in the applicable implementation plan, or, if such TCMs are behind the schedule established in the applicable implementation plan, the MPO and USDOT have determined that past obstacles to implementation of the TCMs have been identified and have been or are being overcome, and that all state and local agencies with influence over approvals or funding for TCMs are giving maximum priority to approval or funding of TCMs over other projects within their control, including projects in locations outside the nonattainment or maintenance area. Maximum priority to approval or funding of TCMs includes demonstrations with respect to funding acceleration, commitment of staff or other agency resources, diligent efforts to seek approvals, and similar actions.
 2. If federal funding intended for TCMs in the applicable implementation plan has previously been programmed but is reallocated to projects in the TIP other than TCMs, (or if there are no other TCMs in the TIP, to projects in the TIP other than projects which are eligible for federal funding under ISTEA's Congestion Mitigation and Air Quality Improvement Program), and the TCMs are behind the schedule in the implementation plan, the TIP cannot be found to conform.
 3. Nothing in the TIP may interfere with the implementation of any TCM in the applicable implementation plan.
- D. For FHWA or FTA projects which are not from a conforming transportation plan and TIP, this criterion is satisfied if the project does not interfere with the implementation of any TCM in the applicable implementation plan.

Historical Note

Adopted effective June 15, 1995 (Supp. 95-2).

R18-2-1414. Criteria and Procedures: Currently Conforming Transportation Plan and TIP

During all periods there shall be a currently conforming transportation plan and currently conforming TIP at the time of project approval. This criterion is satisfied if the current transportation plan and TIP have been found to conform to the applicable implementation plan by the MPO and USDOT according to the procedures of this subpart. Only one conforming transportation plan or TIP may exist in an area at any time; conformity determinations of a previous transportation plan or TIP expire once the current plan or TIP is found to conform by USDOT. The conformity determination on a transportation plan or TIP will also lapse if conformity is not determined according to the frequency requirements of R18-2-1404.

Historical Note

Adopted effective June 15, 1995 (Supp. 95-2).

R18-2-1415. Criteria and Procedures: Projects from a Plan and TIP

- A. During all periods the project shall come from a conforming transportation plan and program. Otherwise, the project shall satisfy all criteria in Table 1 of R18-2-1409 for a project not

from a conforming transportation plan and TIP. A project is considered to be from a conforming transportation plan if it meets the requirements of subsection (B) and from a conforming program if it meets the requirements of subsection (C).

- B. A project is considered to be from a conforming transportation plan if one of the following conditions applies:
1. For projects which are required to be identified in the transportation plan in order to satisfy R18-2-1406, the project is specifically included in the conforming transportation plan and the project's design concept and scope have not changed significantly from those which were described in the transportation plan, or in a manner which would significantly impact use of the facility.
 2. For projects which are not required to be specifically identified in the conforming transportation plan, or is consistent with the policies and purpose of the transportation plan and will not interfere with other projects specifically included in the transportation plan.
- C. A project is considered to be from a conforming program if all of the following conditions are met:
1. The project is included in the conforming TIP and the design concept and scope of the project were adequate at the time of the TIP conformity determination to determine its contribution to the TIP's regional emissions and have not changed significantly from those which were described in the TIP, or in a manner which would significantly impact use of the facility.
 2. If the TIP describes a project design concept and scope which includes project-level emissions mitigation or control measures, enforceable written commitments to implement such measures shall be obtained from the project sponsor or operator as required by R18-2-1433 in order for the project to be considered from a conforming program. Any change in these mitigation or control measures that would significantly reduce their effectiveness constitutes a change in the design concept and scope of the project.

Historical Note

Adopted effective June 15, 1995 (Supp. 95-2).

R18-2-1416. Criteria and Procedures: Localized CO and PM₁₀ Violations (Hot Spots)

- A. During all periods any FHWA or FTA project shall not cause or contribute to any new localized CO or PM₁₀ violations or increase the frequency or severity of any existing CO or PM₁₀ violations in CO and PM₁₀ nonattainment and maintenance areas. This criterion is satisfied if it is demonstrated that no new local violations will be created and the severity or number of existing violations will not be increased as a result of the project.
- B. The demonstration shall be performed according to the requirements of R18-2-1405 and R18-2-1431.
- C. For projects which are not of the type identified by R18-2-1431(A) or R18-2-1431(D), this criterion may be satisfied if consideration of local factors clearly demonstrates that no local violations presently exist and no new local violations will be created as a result of the project. Otherwise, in CO nonattainment and maintenance areas, a quantitative demonstration shall be performed according to the requirements of R18-2-1431(B).

Historical Note

Adopted effective June 15, 1995 (Supp. 95-2).

R18-2-1417. Criteria and Procedures: Compliance with PM₁₀ Control Measures

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During all periods any FHWA or FTA project shall comply with PM₁₀ control measures in the applicable implementation plan. This condition is satisfied if control measures (for the purpose of limiting PM₁₀ emissions from the construction activities or normal use and operation associated with the project) contained in the applicable implementation plan are included in the final plans, specifications, and estimates for the project.

Historical Note

Adopted effective June 15, 1995 (Supp. 95-2).

R18-2-1418. Criteria and Procedures: Motor Vehicle Emissions Budget (Transportation Plan)

- A.** The transportation plan shall be consistent with the motor vehicle emissions budget in the applicable implementation plan or implementation plan submission. This criterion applies during the transitional period and the control strategy and maintenance periods, except as provided in R18-2-1436. This criterion may be satisfied if the requirements in subsections (B) and (C) are met:
- B.** A regional emissions analysis shall be performed as follows:
1. The regional analysis shall estimate emissions of any of the following pollutants and pollutant precursors for which the area is in nonattainment or maintenance and for which the applicable implementation plan or implementation plan submission establishes an emissions budget:
 - a. VOC as an ozone precursor.
 - b. NO_x as an ozone precursor, unless the Administrator determines that additional reductions of NO_x would not contribute to attainment.
 - c. CO.
 - d. PM₁₀ (and its precursors VOC or NO_x if the applicable implementation plan or implementation plan submission identifies transportation-related precursor emissions within the nonattainment area as a significant contributor to the PM₁₀ nonattainment problem or establishes a budget for such emissions).
 - e. NO_x (in NO₂ nonattainment or maintenance areas).
 2. The regional emissions analysis shall estimate emissions from the entire transportation system, including all regionally significant transportation projects contained in the transportation plan and all other regionally significant highway and transit projects expected in the nonattainment or maintenance area in the time-frame of the transportation plan.
 3. The emissions analysis methodology shall meet the requirements of R18-2-1430.
 4. For areas with a transportation plan that meets the content requirements of R18-2-1406(A), the emissions analysis shall be performed for each horizon year. Emissions in milestone years which are between the horizon years may be determined by interpolation.
 5. For areas with a transportation plan that does not meet the content requirements of R18-2-1406(A), the emissions analysis shall be performed for all of the following:
 - a. The last year of the plan's forecast period.
 - b. The attainment year, if the attainment year is in the time span of the transportation plan.
 - c. Any other years in the time span of the transportation plan such that there is not a gap of more than 10 years between analysis years. Emissions in milestone years which are between these analysis years may be determined by interpolation.
- C.** The regional emissions analysis shall demonstrate that for each of the applicable pollutants or pollutant precursors in subsection (B)(1) the emissions are less than or equal to the motor vehicle emissions budget as established in the applicable

implementation plan or implementation plan submission as follows:

1. If the applicable implementation plan or implementation plan submission establishes emissions budgets for milestone years, emissions in each milestone year are less than or equal to the motor vehicle emissions budget established for that year.
2. For nonattainment areas, emissions in the attainment year are less than or equal to the motor vehicle emissions budget established in the applicable implementation plan or implementation plan submission for that year.
3. For nonattainment areas, emissions in each analysis or horizon year after the attainment year are less than or equal to the motor vehicle emissions budget established by the applicable implementation plan or implementation plan submission for the attainment year. If emissions budgets are established for years after the attainment year, emissions in each analysis year or horizon year shall be less than or equal to the motor vehicle emissions budget for that year, if any, or the motor vehicle emissions budget for the most recent budget year prior to the analysis year or horizon year.
4. For maintenance areas, emissions in each analysis or horizon year are less than or equal to the motor vehicle emissions budget established by the maintenance plan for that year, if any, or the emissions budget for the most recent budget year prior to the analysis or horizon year.

Historical Note

Adopted effective June 15, 1995 (Supp. 95-2).

R18-2-1419. Criteria and Procedures: Motor Vehicle Emissions Budget (TIP)

- A.** The TIP shall be consistent with the motor vehicle emissions budgets in the applicable implementation plan or implementation plan submission. This criterion applies during the transitional period and the control strategy and maintenance periods, except as provided in R18-2-1436. This criterion may be satisfied if the requirements in subsections (B) and (C) are met.
- B.** For areas with a conforming transportation plan that fully meets the content requirements of R18-2-1406(A), this criterion may be satisfied without additional regional emissions analysis if:
1. Each program year of the TIP is consistent with the federal funding which may be reasonably expected for that year, and required state or local matching funds and funds for state or local funding-only projects are consistent with the revenue sources expected over the same period; and
 2. The TIP is consistent with the conforming transportation plan such that the regional emissions analysis already performed for the plan applies to the TIP also. This requires a demonstration that:
 - a. The TIP contains all projects which shall be started in the TIP's time-frame in order to achieve the highway and transit system envisioned by the transportation plan in each of its horizon years;
 - b. All TIP projects which are regionally significant are part of the specific highway or transit system envisioned in the transportation plan's horizon years; and
 - c. The design concept and scope of each regionally significant transportation project in the TIP is not significantly different from that described in the transportation plan.
 3. If the requirements in subsections (B)(1) and (B)(2) are not met, then either:
 - a. The TIP may be modified to meet those requirements; or

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- b. The transportation plan shall be revised so that the requirements in subsections (B)(1) and (B)(2) are met. Once the revised plan has been found to conform, this criterion is met for the TIP with no additional analysis except a demonstration that the TIP meets the requirements of subsections (B)(1) and (B)(2).
- C. For areas with a transportation plan that does not meet the content requirements of R18-2-1406(A), a regional emissions analysis shall meet all of the following requirements:
1. The regional emissions analysis shall estimate emissions from the entire transportation system, including all projects contained in the proposed TIP, the transportation plan, and all other regionally significant highway and transit projects expected in the nonattainment or maintenance area in the time-frame of the transportation plan.
 2. The analysis methodology shall meet the requirements of R18-2-1430(C).
 3. The regional emissions analysis shall satisfy the requirements of R18-2-1418(B)(1), R18-2-1418(B)(5), and R18-2-1418(C).

Historical Note

Adopted effective June 15, 1995 (Supp. 95-2).

R18-2-1420. Criteria and Procedures: Motor Vehicle Emissions Budget (Project Not from a Plan and TIP)

- A. The project which is not from a conforming transportation plan and a conforming TIP shall be consistent with the motor vehicle emissions budget in the applicable implementation plan or implementation plan submission. This criterion applies during the transitional period and the control strategy and maintenance periods, except as provided in R18-2-1436. It is satisfied if emissions from the implementation of the project, when considered with the emissions from the projects in the conforming transportation plan and TIP and all other regionally significant transportation projects expected in the area, do not exceed the motor vehicle emissions budget in the applicable implementation plan or implementation plan submission.
- B. For areas with a conforming transportation plan that meets the content requirements of R18-2-1406(A):
1. This criterion may be satisfied without additional regional analysis if the project is included in the conforming transportation plan, even if it is not specifically included in the latest conforming TIP. This requires a demonstration that all of the following apply:
 - a. Allocating funds to the project will not delay the implementation of projects in the transportation plan or TIP which are necessary to achieve the highway and transit system envisioned by the transportation plan in each of its horizon years.
 - b. The project is not regionally significant or is part of the specific highway or transit system envisioned in the transportation plan's horizon years.
 - c. The design concept and scope of the project is not significantly different from that described in the transportation plan.
 2. If the requirements in subsection (B)(1) are not met, a regional emissions analysis shall be performed as follows:
 - a. The analysis methodology shall meet the requirements of R18-2-1430.
 - b. The analysis shall estimate emissions from the transportation system, including the proposed project and all other regionally significant transportation projects expected in the nonattainment or maintenance area in the time-frame of the transportation plan.

The analysis shall include emissions from all previously approved projects which were not from a transportation plan and TIP.

- c. The regional emissions analysis shall meet the requirements of R18-2-1418(B)(1), R18-2-1418(B)(4) and R18-2-1418(C).
- C. For areas with a transportation plan that does not meet the content requirements of R18-2-1406(A), a regional emissions analysis shall be performed for the project together with the conforming TIP and all other regionally significant transportation projects expected in the nonattainment or maintenance area. This criterion may be satisfied if all of the following apply:
1. The analysis methodology meets the requirements of R18-2-1430(C).
 2. The analysis estimates emissions from the transportation system, including the proposed project, and all other regionally significant transportation projects expected in the nonattainment or maintenance area in the time-frame of the transportation plan.
 3. The regional emissions analysis satisfies the requirements of R18-2-1418(B)(1), R18-2-1418(B)(5), and R18-2-1418(C).

Historical Note

Adopted effective June 15, 1995 (Supp. 95-2).

R18-2-1421. Criteria and Procedures: Localized CO Violations (Hot Spots) in the Interim and Transitional Periods

- A. Each FHWA or FTA project shall eliminate or reduce the severity and number of localized CO violations in the area substantially affected by the project (in CO nonattainment areas). This criterion applies during the interim and transitional periods only. This criterion is satisfied with respect to existing localized CO violations if it is demonstrated that existing localized CO violations will be eliminated or reduced in severity and number as a result of the project.
- B. The demonstration shall be performed according to the requirements of R18-2-1405 and R18-2-1431.
- C. For projects which are not of the type identified by R18-2-1431(A), this criterion may be satisfied if consideration of local factors clearly demonstrates that existing CO violations will be eliminated or reduced in severity and number. Otherwise, a quantitative demonstration shall be performed according to the requirements of R18-2-1431(B).

Historical Note

Adopted effective June 15, 1995 (Supp. 95-2).

R18-2-1422. Criteria and Procedures: Interim and Transitional Period Reductions in Ozone and CO Areas (Transportation Plan)

- A. A transportation plan shall contribute to emissions reductions in ozone and CO nonattainment areas. This criterion applies during the interim and transitional periods only, except as otherwise provided in R18-2-1436. It applies to the net effect on emissions of all projects contained in a new or revised transportation plan. This criterion may be satisfied if a regional emissions analysis is performed as described in subsections (B) through (F).
- B. Determine the analysis years for which emissions are to be estimated. Analysis years shall be no more than 10 years apart. The first analysis year shall be no later than the first milestone year (1995 in CO nonattainment areas and 1996 in ozone nonattainment areas). The second analysis year shall be either the attainment year for the area or, if the attainment year is the same as the first analysis year or earlier, the second analysis year shall be at least five years beyond the first analysis year.

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- The last year of the transportation plan's forecast period shall also be an analysis year.
- C. Define the Baseline scenario for each of the analysis years to be the future transportation system that would result from current programs, composed of all of the following, except that projects listed in R18-2-1434 and R18-2-1435 need not be explicitly considered:
1. All in-place regionally significant highway and transit facilities, services and activities.
 2. All ongoing travel demand management or transportation system management activities.
 3. Completion of all regionally significant transportation projects, regardless of funding source, which are currently under construction or are undergoing right-of-way acquisition (except for hardship acquisition and protective buying); come from the first three years of the previously conforming transportation plan or TIP; or have completed the NEPA process. For the first conformity determination on the transportation plan after November 24, 1993, a project may not be included in the Baseline scenario and shall be included in the Action scenario as described in subsection (D), if one of the following major steps has not occurred within the most recent three-year period:
 - a. NEPA process completion;
 - b. Start of final design;
 - c. Acquisition of a significant portion of the right-of-way;
 - d. Approval of the plans, specifications and estimates.
- D. Define the Action scenario for each of the analysis years as the transportation system that will result in that year from the implementation of the proposed transportation plan, TIPs adopted under it, and other expected regionally significant transportation projects in the nonattainment area. The Action scenario will include all of the following except that projects listed in R18-2-1434 and R18-2-1435 need not be explicitly considered:
1. All facilities, services, and activities in the Baseline scenario;
 2. Completion of all TCMs and regionally significant transportation projects, including facilities, services, and activities, specifically identified in the proposed transportation plan which will be operational or in effect in the analysis year, except that regulatory TCMs may not be assumed to begin at a future time unless the regulation is already adopted by the enforcing jurisdiction or the TCM is identified in the applicable implementation plan;
 3. All travel demand management programs and transportation system management activities known to the MPO, but not included in the applicable implementation plan or utilizing any federal funding or approval, which have been fully adopted or funded by the enforcing jurisdiction or sponsoring agency since the last conformity determination on the transportation plan;
 4. The incremental effects of any travel demand management programs and transportation system management activities known to the MPO, but not included in the applicable implementation plan or utilizing any federal funding or approval, which were adopted or funded prior to the date of the last conformity determination on the transportation plan, but which have been modified since then to be more stringent or effective;
 5. Completion of all expected regionally significant highway and transit projects which are not from a conforming transportation plan and TIP;
6. Completion of all expected regionally significant non-FHWA/FTA highway and transit projects that have clear funding sources and commitments leading toward their implementation and completion by the analysis year.
- E. Estimate the emissions predicted to result in each analysis year from travel on the transportation systems defined by the Baseline and Action scenarios and determine the difference in regional VOC and NO_x emissions (unless the Administrator determines that additional reductions of NO_x would not contribute to attainment) between the two scenarios for ozone nonattainment areas and the difference in CO emissions between the two scenarios for CO nonattainment areas. The analysis shall be performed for each of the analysis years according to the requirements of R18-2-1430. Emissions in milestone years which are between the analysis years may be determined by interpolation.
- F. This criterion is met if the regional VOC and NO_x emissions (for ozone nonattainment areas) and CO emissions (for CO nonattainment areas) predicted in the Action scenario are less than the emissions predicted from the Baseline scenario in each analysis year, and if this can reasonably be expected to be true in the periods between the first milestone year and the analysis years. The regional analysis shall show that the Action scenario contributes to a reduction in emissions from the 1990 emissions by any nonzero amount.

Historical Note

Adopted effective June 15, 1995 (Supp. 95-2).

R18-2-1423. Criteria and Procedures: Interim Period Reductions in Ozone and CO Areas (TIP)

- A. A TIP shall contribute to emissions reductions in ozone and CO nonattainment areas. This criterion applies during the interim and transitional periods only, except as otherwise provided in R18-2-1436. It applies to the net effect on emissions of all projects contained in a new or revised TIP. This criterion may be satisfied if a regional emissions analysis is performed as described in subsections (B) through (F).
- B. Determine the analysis years for which emissions are to be estimated. The first analysis year shall be no later than the first milestone year (1995 in CO nonattainment areas and 1996 in ozone nonattainment areas). The analysis years shall be no more than 10 years apart. The second analysis year shall be either the attainment year for the area or, if the attainment year is the same as the first analysis year or earlier, the second analysis year shall be at least five years beyond the first analysis year. The last year of the transportation plan's forecast period shall also be an analysis year.
- C. Define the Baseline scenario as the future transportation system that would result from current programs, composed of all of the following, except that projects listed in R18-2-1434 and R18-2-1435 need not be explicitly considered:
1. All in-place regionally significant highway and transit facilities, services, and activities.
 2. All ongoing travel demand management or transportation system management activities.
 3. Completion of all regionally significant transportation projects, regardless of funding source, which are currently under construction or are undergoing right-of-way acquisition, except for hardship acquisition and protective buying; come from the first three years of the previously conforming TIP; or have completed the NEPA process. For the first conformity determination on the TIP after November 24, 1993, a project may not be included in the Baseline scenario if one of the following major steps has not occurred within the most recent three-year period:

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- a. NEPA process completion.
- b. Start of final design.
- c. Acquisition of a significant portion of the right-of-way.
- d. Approval of the plans, specifications, and estimates. Such a project shall be included in the Action scenario, as described in subsection (D).

D. Define the Action scenario as the future transportation system that will result from the implementation of the proposed TIP and other expected regionally significant transportation projects in the nonattainment area in the time-frame of the transportation plan. It will include all of the following, except that projects listed in R18-2-1434 and R18-2-1435 need not be explicitly considered:

1. All facilities, services, and activities in the Baseline scenario;
2. Completion of all TCMs and regionally significant transportation projects, including facilities, services, and activities, included in the proposed TIP, except that regulatory TCMs may not be assumed to begin at a future time unless the regulation is already adopted by the enforcing jurisdiction or the TCM is contained in the applicable implementation plan;
3. All travel demand management programs and transportation system management activities known to the MPO, but not included in the applicable implementation plan or utilizing any federal funding or approval, which have been fully adopted or funded by the enforcing jurisdiction or sponsoring agency since the last conformity determination on the TIP;
4. The incremental effects of any travel demand management programs and transportation system management activities known to the MPO, but not included in the applicable implementation plan or utilizing any federal funding or approval, which were adopted or funded prior to the date of the last conformity determination on the TIP, but which have been modified since then to be more stringent or effective;
5. Completion of all expected regionally significant highway and transit projects which are not from a conforming transportation plan and TIP;
6. Completion of all expected regionally significant non-FHWA/FTA highway and transit projects that have clear funding sources and commitments leading toward their implementation and completion by the analysis year.

E. Estimate the emissions predicted to result in each analysis year from travel on the transportation systems defined by the Baseline and Action scenarios, and determine the difference in regional VOC and NO_x emissions (unless the Administrator determines that additional reductions of NO_x would not contribute to attainment) between the two scenarios for ozone nonattainment areas and the difference in CO emissions between the two scenarios for CO nonattainment areas. The analysis shall be performed for each of the analysis years according to the requirements of R18-2-1430. Emissions in milestone years which are between analysis years may be determined by interpolation.

F. This criterion is met if the regional VOC and NO_x emissions in ozone nonattainment areas and CO emissions in CO nonattainment areas predicted in the Action scenario are less than the emissions predicted from the Baseline scenario in each analysis year, and if this can reasonably be expected to be true in the period between the analysis years. The regional analysis shall show that the Action scenario contributes to a reduction in emissions from the 1990 emissions by any nonzero amount.

Historical Note

Adopted effective June 15, 1995 (Supp. 95-2).

R18-2-1424. Criteria and Procedures: Interim Period Reductions for Ozone and CO Areas (Project Not from a Plan and TIP)

A transportation project shall contribute to emissions reductions in ozone and CO nonattainment areas. This criterion applies during the interim and transitional periods only, except as otherwise provided in R18-2-1436. This criterion is satisfied if a regional emissions analysis is performed which meets the requirements of R18-2-1422 and which includes the transportation plan and project in the Action scenario. If the project which is not from a conforming transportation plan and TIP is a modification of a project currently in the plan or TIP, the Baseline scenario shall include the project with its original design concept and scope, and the Action scenario shall include the project with its new design concept and scope.

Historical Note

Adopted effective June 15, 1995 (Supp. 95-2).

R18-2-1425. Criteria and Procedures: Interim Period Reductions for PM₁₀ and NO₂ Areas (Transportation Plan)

A. A transportation plan shall contribute to emission reductions or shall not increase emissions in PM₁₀ and NO₂ nonattainment areas. This criterion applies only during the interim and transitional periods. It applies to the net effect on emissions of all projects contained in a new or revised transportation plan. This criterion may be satisfied if the requirements of either subsections (B) or (C) are met.

B. Demonstrate that implementation of the plan and all other regionally significant transportation projects expected in the nonattainment area will contribute to reductions in emissions of PM₁₀ in a PM₁₀ nonattainment area, and of each transportation-related precursor of PM₁₀ in PM₁₀ nonattainment areas if the EPA Regional Administrator or the Director of ADEQ has made a finding that such precursor emissions from within the nonattainment area are a significant contributor to the PM₁₀ nonattainment problem and has so notified the MPO and USDOT, and of NO_x in an NO₂ nonattainment area, by performing a regional emissions analysis as follows:

1. Determine the analysis years for which emissions are to be estimated. Analysis years shall be no more than 10 years apart. The first analysis year shall be no later than 1996 (for NO₂ areas) or four years and six months following the date of designation (for PM₁₀ areas). The second analysis year shall be either the attainment year for the area or, if the attainment year is the same as the first analysis year or earlier, the second analysis year shall be at least five years beyond the first analysis year. The last year of the transportation plan's forecast period shall also be an analysis year.
2. Define for each of the analysis years the Baseline scenario, as defined in R18-2-1422(C), and the Action scenario, as defined in R18-2-1422(D).
3. Estimate the emissions predicted to result in each analysis year from travel on the transportation systems defined by the Baseline and Action scenarios and determine the difference between the two scenarios in regional PM₁₀ emissions in a PM₁₀ nonattainment area (and transportation-related precursors of PM₁₀ in PM₁₀ nonattainment areas if the EPA Regional Administrator or the Director of ADEQ has made a finding that such precursor emissions from within the nonattainment area are a significant contributor to the PM₁₀ nonattainment problem and has so notified ADOT, the MPO where one exists and USDOT) and in NO_x emissions in an NO₂ nonattainment

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area. The analysis shall be performed for each of the analysis years according to the requirements of R18-2-1430. The analysis shall address the periods between the analysis years and the periods between 1990, the first milestone year if any, and the first of the analysis years. Emissions in milestone years which are between the analysis years may be determined by interpolation.

4. Demonstrate that the regional PM₁₀ emissions and PM₁₀ precursor emissions, where applicable, (for PM₁₀ nonattainment areas) and NO_x emissions (for NO₂ nonattainment areas) predicted in the Action scenario are less than the emissions predicted from the Baseline scenario in each analysis year, and that this can reasonably be expected to be true in the periods between the first milestone year (if any) and the analysis years.
- C. Demonstrate that when the projects in the transportation plan and all other regionally significant transportation projects expected in the nonattainment area are implemented, the transportation system's total highway and transit emissions of PM₁₀ in a PM₁₀ nonattainment area (and transportation-related precursors of PM₁₀ in PM₁₀ nonattainment areas if the EPA Regional Administrator or the Director of ADEQ has made a finding that such precursor emissions from within the nonattainment area are a significant contributor to the PM₁₀ nonattainment problem and has so notified the MPO and USDOT) and of NO_x in an NO₂ nonattainment area will not be greater than baseline levels, by performing a regional emissions analysis as follows:
1. Determine the baseline regional emissions of PM₁₀ and PM₁₀ precursors, where applicable (for PM₁₀ nonattainment areas) and NO_x (for NO₂ nonattainment areas) from highway and transit sources. Baseline emissions are those estimated to have occurred during calendar year 1990, unless the control strategy implementation plan for that area includes a baseline emissions inventory for a different year.
 2. Estimate the emissions of the applicable pollutant or pollutants from the entire transportation system, including projects in the transportation plan and TIP and all other regionally significant transportation projects in the nonattainment area, according to the requirements of R18-2-1430. Emissions shall be estimated for analysis years which are no more than 10 years apart. The first analysis year shall be no later than 1996 (for NO₂ areas) or four years and six months following the date of designation (for PM₁₀ areas). The second analysis year shall be either the attainment year for the area or, if the attainment year is the same as the first analysis year or earlier, the second analysis year shall be at least five years beyond the first analysis year. The last year of the transportation plan's forecast period shall also be an analysis year.
 3. Demonstrate that for each analysis year the emissions estimated in subsection (C)(2) are no greater than baseline emissions of PM₁₀ and PM₁₀ precursors, where applicable (for PM₁₀ nonattainment areas) or NO_x (for NO₂ nonattainment areas) from highway and transit sources.

Historical Note

Adopted effective June 15, 1995 (Supp. 95-2).

R18-2-1426. Criteria and Procedures: Interim Period Reductions for PM₁₀ and NO₂ Areas (TIP)

- A. A TIP shall contribute to emission reductions or shall not increase emissions in PM₁₀ and NO₂ nonattainment areas. This criterion applies only during the interim and transitional periods. It applies to the net effect on emissions of all projects

contained in a new or revised TIP. This criterion may be satisfied if the requirements of either subsection (B) or subsection (C) are met.

- B. Demonstrate that implementation of the plan and TIP and all other regionally significant transportation projects expected in the nonattainment area will contribute to reductions in emissions of PM₁₀ in a PM₁₀ nonattainment area (and transportation-related precursors of PM₁₀ in PM₁₀ nonattainment areas if the EPA Regional Administrator or the Director of ADEQ has made a finding that such precursor emissions from within the nonattainment area are a significant contributor to the PM₁₀ nonattainment problem and has so notified the MPO and USDOT) and of NO_x in an NO₂ nonattainment area, by performing a regional emissions analysis as follows:
1. Determine the analysis years for which emissions are to be estimated, according to the requirements of R18-2-1425(B)(1).
 2. Define for each of the analysis years the Baseline scenario, as defined in R18-2-1423(C), and the Action scenario, as defined in R18-2-1423(D).
 3. Estimate the emissions predicted to result in each analysis year from travel on the transportation systems defined by the Baseline and Action scenarios as required by R18-2-1425(B)(3), and make the demonstration required by R18-2-1425(B)(4).
- C. Demonstrate that when the projects in the transportation plan and TIP and all other regionally significant transportation projects expected in the area are implemented, the transportation system's total highway and transit emissions of PM₁₀ in a PM₁₀ nonattainment area (and transportation-related precursors of PM₁₀ in PM₁₀ nonattainment areas if the EPA Regional Administrator or the Director of ADEQ has made a finding that such precursor emissions from within the nonattainment area are a significant contributor to the PM₁₀ nonattainment problem and has so notified the MPO and USDOT) and of NO_x in an NO₂ nonattainment area will not be greater than baseline levels, by performing a regional emissions analysis as required by R18-2-1425(C).

Historical Note

Adopted effective June 15, 1995 (Supp. 95-2).

R18-2-1427. Criteria and Procedures: Interim Period Reductions for PM₁₀ and NO₂ Areas (Project Not from a Plan and TIP)

A transportation project which is not from a conforming transportation plan and TIP shall contribute to emission reductions or shall not increase emissions in PM₁₀ and NO₂ nonattainment areas. This criterion applies during the interim and transitional periods only. This criterion is met if a regional emissions analysis is performed which meets the requirements of R18-2-1425 and which includes the transportation plan and project in the Action scenario. If the project which is not from a conforming transportation plan and TIP is a modification of a project currently in the transportation plan or TIP, and R18-2-1425(B) is used to demonstrate satisfaction of this criterion, the Baseline scenario shall include the project with its original design concept and scope, and the Action scenario shall include the project with its new design concept and scope.

Historical Note

Adopted effective June 15, 1995 (Supp. 95-2).

R18-2-1428. Transition from the Interim Period to the Control Strategy Period

- A. For areas which submit a control strategy implementation plan revision after November 24, 1993:
1. The transportation plan and TIP shall be demonstrated to conform according to transitional period criteria and pro-

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cedures by one year from the date the CAA requires submission of such control strategy implementation plan revision. Otherwise, the conformity status of the transportation plan and TIP will lapse, and no new project-level conformity determinations may be made.

- a. The conformity of new transportation plans and TIPs may be demonstrated according to Phase II interim period criteria and procedures for 90 days following submission of the control strategy implementation plan revision, provided the conformity of such transportation plans and TIPs is redetermined according to transitional period criteria and procedures as required in subsection (A)(1) and such transportation plans and TIPs are consistent with the motor vehicle emissions budget in the applicable implementation plan or any previously submitted control strategy implementation plan revision.
 - b. Beginning 90 days after submission of the control strategy implementation plan revision, new transportation plans and TIPs shall demonstrate conformity according to transitional period criteria and procedures.
2. If EPA disapproves the submitted control strategy implementation plan revision and so notifies the state, the MPO where one exists, and USDOT, which initiates the sanction process under CAA §§ 179 or 110(m), the conformity status of the transportation plan and TIP shall lapse 120 days after EPA's disapproval, and no new project-level conformity determinations may be made. No new transportation plan, TIP, or project may be found to conform until another control strategy implementation plan revision is submitted and conformity is demonstrated according to transitional period criteria and procedures.
 3. Notwithstanding subsection (A)(2), if EPA disapproves the submitted control strategy implementation plan revision but determines that the control strategy contained in the revision would have been considered approvable with respect to requirements for emission reductions if all committed measures had been submitted in enforceable form as required by CAA § 110(a)(2)(A), the provisions of subsection (A)(1) shall apply for 12 months following the date of disapproval. The conformity status of the transportation plan and TIP shall lapse 12 months following the date of disapproval unless another control strategy implementation plan revision is submitted to EPA and found to be complete.
- B.** For areas which have not submitted a control strategy implementation plan revision:
1. For areas whose CAA deadline for submission of the control strategy implementation plan revision is after November 24, 1993, and EPA has notified the state, the MPO where one exists, and USDOT of the state's failure to submit a control strategy implementation plan revision, which initiates the sanction process under CAA §§ 179 or 110(m) all of the following shall apply:
 - a. No new transportation plans or TIPs may be found to conform beginning 120 days after the CAA deadline.
 - b. The conformity status of the transportation plan and TIP shall lapse one year after the CAA deadline, and no new project-level conformity determinations may be made.
 2. For areas whose CAA deadline for submission of the control strategy implementation plan was before November 24, 1993, and EPA has made a finding of failure to submit a control strategy implementation plan revision, which initiates the sanction process under CAA §§ 179 or 110(m), all of the following apply unless the failure has been remedied and acknowledged by a letter from the EPA Regional Administrator:
 - a. No new transportation plans or TIPs may be found to conform beginning March 24, 1994.
 - b. The conformity status of the transportation plan and TIP shall lapse November 25, 1994, and no new project-level conformity determinations may be made.
- C.** For areas which have not submitted a complete control strategy implementation plan revision:
1. For areas where EPA notifies the state, the MPO where one exists, and USDOT after November 24, 1993, that the control strategy implementation plan revision submitted by the state is incomplete, which initiates the sanction process under CAA §§ 179 or 110(m), all of the following apply unless the failure has been remedied and acknowledged by a letter from the EPA Regional Administrator:
 - a. No new transportation plans or TIPs may be found to conform beginning 120 days after EPA's incompleteness finding.
 - b. The conformity status of the transportation plan and TIP shall lapse one year after the CAA deadline, and no new project-level conformity determinations may be made.
 - c. Notwithstanding subsections (C)(1)(a) and (b), if EPA notes in its incompleteness finding that the submittal would have been considered complete with respect to requirements for emission reductions if all committed measures had been submitted in enforceable form as required by CAA § 110(a)(2)(A), the provisions of subsection (A)(1) shall apply for a period of 12 months following the date of the incompleteness determination. The conformity status of the transportation plan and TIP shall lapse 12 months following the date of the incompleteness determination unless another control strategy implementation plan revision is submitted to EPA and found to be complete.
 2. For areas where EPA has determined before November 24, 1993, that the control strategy implementation plan revision is incomplete, which initiates the sanction process under CAA §§ 179 or 110(m), all of the following apply unless the failure has been remedied and acknowledged by a letter from the EPA Regional Administrator:
 - a. No new transportation plans or TIPs may be found to conform beginning March 24, 1994.
 - b. The conformity status of the transportation plan and TIP shall lapse November 25, 1994, and no new project-level conformity determinations may be made.
 - c. Notwithstanding subsections (C)(2)(a) and (b), if EPA notes in its incompleteness finding that the submittal would have been considered complete with respect to requirements for emission reductions if all committed measures had been submitted in enforceable form as required by CAA § 110(a)(2)(A), the provisions of subsection (D)(1) shall apply for a period of 12 months following the date of the incompleteness determination. The conformity status of the transportation plan and TIP shall lapse 12 months following the date of the incompleteness determination unless another control strategy imple-

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- mentation plan revision is submitted to EPA and found to be complete.
- D.** For areas which submitted a control strategy implementation plan before November 24, 1993:
1. The transportation plan and TIP shall have been demonstrated to conform according to transitional period criteria and procedures by November 25, 1994. Otherwise, their conformity status will lapse, and no new project-level conformity determinations may be made. From and after February 22, 1994, new transportation plans and TIPs shall demonstrate conformity according to transitional period criteria and procedures.
 2. If EPA has disapproved the most recent control strategy implementation plan submission, the conformity status of the transportation plan and TIP shall lapse March 24, 1994, and no new project-level conformity determinations may be made. No new transportation plans, TIPs, or projects may be found to conform until another control strategy implementation plan revision is submitted and conformity is demonstrated according to transitional period criteria and procedures.
 3. Notwithstanding subsection (D)(2), if EPA has disapproved the submitted control strategy implementation plan revision but determines that the control strategy contained in the revision would have been considered approvable with respect to requirements for emission reductions if all committed measures had been submitted in enforceable form as required by CAA § 110(a)(2)(A), the provisions of subsection (D)(1) shall apply until November 25, 1994. The conformity status of the transportation plan and TIP shall lapse November 25, 1994, unless another control strategy implementation plan revision is submitted to EPA and found to be complete.
- E.** If the currently conforming transportation plan and TIP have not been demonstrated to conform according to transitional period criteria and procedures, the requirements of subsections (E)(1) and (2) shall be met.
1. Before a FHWA or FTA project which is regionally significant and increases single-occupant vehicle capacity (a new general purpose highway on a new location or adding general purpose lanes) may be found to conform, ADEQ shall be consulted on how the emissions which the existing transportation plan and TIP's conformity determination estimates for the Action scenario, as required by R18-2-1422 through R18-2-1427, compare to the motor vehicle emissions budget in the implementation plan submission or the projected motor vehicle emissions budget in the implementation plan under development.
 2. In the event of unresolved disputes on such project-level conformity determinations, ADEQ may escalate the issue to the governor consistent with the procedure in R18-2-1405, which applies for ADEQ comments on a conformity determination.
- F.** Redetermination of conformity of the existing transportation plan and TIP according to the transitional period criteria and procedures:
1. The redetermination of the conformity of the existing transportation plan and TIP according to transitional period criteria and procedures (as required by subsections (A)(1) and (D)(1)) does not require new emissions analysis and does not have to satisfy the requirements of R18-2-1410 and R18-2-1411 if all of the following are met:
 - a. The control strategy implementation plan revision submitted to EPA uses the MPO's modeling of the existing transportation plan and TIP for its projections of motor vehicle emissions.
 - b. The control strategy implementation plan does not include any transportation projects which are not included in the transportation plan and TIP.
 2. A redetermination of conformity as described in subsection (F)(1) is not considered a conformity determination for the purposes of R18-2-1404(E) or R18-2-1404(I) regarding the maximum intervals between conformity determinations. Conformity shall be determined according to all the applicable criteria and procedures of R18-2-1409 within three years of the last determination which did not rely on subsection (F)(1).
- G.** Ozone nonattainment areas:
1. The requirements of subsection (B)(1) apply if a serious or above ozone nonattainment area has not submitted the implementation plan revisions which CAA §§ 182(c)(2)(A) and 182(c)(2)(B) require to be submitted to EPA November 15, 1994, even if the area has submitted the implementation plan revision which CAA § 182(b)(1) requires to be submitted to EPA November 15, 1993.
 2. The requirements of subsection (B)(1) apply if a moderate ozone nonattainment area which is using photochemical dispersion modeling to demonstrate the "specific annual reductions as necessary to attain" required by CAA § 182(b)(1), and which has permission from EPA to delay submission of such demonstration until November 15, 1994, does not submit such demonstration by that date. The requirements of subsection (B)(1) apply in this case even if the area has submitted the 15% emission reduction demonstration required by CAA § 182(b)(1).
 3. The requirements of subsection (A) apply when the implementation plan revisions required by CAA §§ 182(c)(2)(A) and 182(c)(2)(B) are submitted.
- H.** Nonattainment areas which are not required to demonstrate reasonable further progress and attainment. If an area listed in R18-2-1436 submits a control strategy implementation plan revision, the requirements of subsections (A) and (E) apply. Because the areas listed in R18-2-1436 are not required to demonstrate reasonable further progress and attainment and therefore have no CAA deadline, the provisions of subsection (B) do not apply to these areas at any time.
- I.** If a control strategy implementation plan revision is not submitted to EPA but a maintenance plan required by CAA § 175A is submitted to EPA, the requirements of subsection (A) or (D) apply, with the maintenance plan submission treated as a "control strategy implementation plan revision" for the purposes of those requirements.
- J.** This Section does not become effective until June 1, 1996.

Historical Note

Adopted effective June 15, 1995 (Supp. 95-2).

R18-2-1429. Requirements for Adoption or Approval of Projects by Recipients of Funds Designated under 23 U.S.C. or the Federal Transit Act

- A.** This Section shall not apply to any of the following:
1. A transportation project that is a street with a lower classification than a collector street, as specified in the most recent federal classification map for the region.
 2. An exempt project listed in R18-2-1434.
- B.** No recipient of federal funds designated under 23 U.S.C. or the Federal Transit Act shall adopt or approve a transportation project, regardless of funding source, without first determining whether the transportation project is regionally significant. In making this determination, the recipient shall not take any action that is inconsistent with the procedures developed by ADOT or the MPO pursuant to R18-2-1405(R).

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- C. No recipient of federal funds designated under 23 U.S.C. or the Federal Transit Act shall adopt or approve a regionally significant highway or transit project, regardless of funding source, unless both of the following apply:
1. There is a currently conforming transportation plan and TIP consistent with the requirements of R18-2-1414.
 2. The requirements of one of the following are met:
 - a. The project comes from a conforming plan and program consistent with the requirements of R18-2-1415.
 - b. The project is included in the regional emissions analysis supporting the currently conforming TIP's conformity determination, even if the project is not strictly "included" in the TIP for the purposes of MPO project selection or endorsement, and the project's design concept and scope have not changed significantly from those which were included in the regional emissions analysis, or in a manner which would significantly impact use of the facility.
 - c. During the control strategy or maintenance period, the project is consistent with the motor vehicle emissions budget in the applicable implementation plan consistent with the requirements of R18-2-1420.
 - d. During Phase II of the interim period, the project contributes to emissions reductions or does not increase emissions consistent with the requirements of R18-2-1424 (in ozone and CO nonattainment areas) or R18-2-1427 (in PM₁₀ and NO₂ nonattainment areas).
 - e. During the transitional period, the project satisfies the requirements of both subsections (1)(2)(c) and (d).
- D. Pursuant to the consultation process established in R18-2-1405(O), ADOT or the MPO where one exists shall, not later than September 1, 1995, develop and make available the procedures to be used by any recipient of federal funds designated under 23 U.S.C. or the Federal Transit Act to comply with subsections (B) and (C). These procedures may be revised periodically, as needed, using the same consultation process. At a minimum, such procedures shall provide for the following:
1. The minimum information required by the recipient to make determinations in compliance with subsections (B) and (C);
 2. The time-frames for action to be taken by the recipient;
 3. For transportation projects determined to be regionally significant, the documentation necessary to demonstrate that the requirements of 23 CFR 450.324(e), (g), and (h) have been met.
- E. After a transportation project is adopted or approved, no subsequent act defined as adoption or approval under this Section or under procedures developed to implement this Section shall be subject to subsection (B) or (C), unless project's design concept or scope have changed significantly since the project was first adopted or approved.
- F. A regionally significant transportation project found to be in conformity, either as a result of a TIP or a separate project analysis, shall retain such conformity finding, irrespective of subsequent analysis, unless the project fails to meet the conditions of its approval or undergoes a significant change in scope. In any event, a conformity determination shall lapse after three years in the absence of a redetermination; except that a project undergoing NEPA approval shall retain its conformity determination, unless none of the following major steps has occurred within the most recent three-year period:
1. NEPA process completion;
 2. Start of final design;
 3. Acquisition of a significant portion of the right-of-way;
 4. Approval of the plans, specifications, and estimates.
- Historical Note**
Adopted effective June 15, 1995 (Supp. 95-2).
- R18-2-1430. Procedures for Determining Regional Transportation-related Emissions**
- A. The following are general requirements for determining regional transportation-related emissions:
1. The regional emissions analysis for the transportation plan, TIP, or project not from a conforming plan and TIP shall include all regionally significant transportation projects expected in the nonattainment or maintenance area, including FHWA or FTA projects proposed in the transportation plan and TIP and all other regionally significant transportation projects which are disclosed to ADOT or the MPO as required by R18-2-1405. Projects which are not regionally significant are not required to be explicitly modeled, but VMT from such projects shall be estimated in accordance with reasonable professional practice. The effects of TCMs and similar projects that are not regionally significant may also be estimated in accordance with reasonable professional practice.
 2. The emissions analysis may not include for emissions reduction credit any TCMs which have been delayed beyond the scheduled date until such time as implementation has been assured. If the TCM has been partially implemented and it can be demonstrated that it is providing quantifiable emission reduction benefits, the emissions analysis may include that emissions reduction credit.
 3. Emissions reduction credit from projects, programs, or activities which require a regulation in order to be implemented may not be included in the emissions analysis unless the regulation is already adopted by the enforcing jurisdiction. Adopted regulations are required for demand management strategies for reducing emissions which are not specifically identified in the applicable implementation plan, and for control programs which are external to the transportation system itself, such as tailpipe or evaporative emission standards, limits on gasoline volatility, inspection and maintenance programs, and oxygenated or reformulated gasoline or diesel fuel. A regulatory program may also be considered to be adopted if an opt-in to a federally enforced program has been approved by EPA, if EPA has promulgated the program (if the control program is a federal responsibility, such as tailpipe standards), or if the CAA requires the program without need for individual state action and without any discretionary authority for EPA to set its stringency, delay its effective date, or not implement the program.
 4. Notwithstanding subsection (A)(3), during the transitional period, control measures or programs which are committed to in an implementation plan submission as described in R18-2-1418 through R18-2-1420, but which has not received final EPA action in the form of a finding of incompleteness, approval, or disapproval, may be assumed for emission reduction credit for the purpose of demonstrating that the requirements of R18-2-1418 through R18-2-1420 are satisfied.
 5. A regional emissions analysis for the purpose of satisfying the requirements of R18-2-1422 through R18-2-1424 may account for the programs in subsection (A)(4), but the same assumptions about these programs shall be used for both the Baseline and Action scenarios.

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6. Ambient temperatures shall be consistent with those used to establish the emissions budget in the applicable implementation plan. Factors other than temperatures, for example the fraction of travel in a hot stabilized engine mode, may be modified after interagency consultation according to R18-2-1405 if the newer estimates incorporate additional or more geographically specific information or represent a logically estimated trend in such factors beyond the period considered in the applicable implementation plan.
- B.** For serious, severe, and extreme ozone nonattainment areas and serious carbon monoxide areas after January 1, 1995, estimates of regional transportation-related emissions used to support conformity determinations shall be made according to procedures which meet the requirements in subsections (B)(1) through (5).
1. A network-based transportation demand model or models relating travel demand and transportation system performance to land-use patterns, population demographics, employment, transportation infrastructure, and transportation policies shall be used to estimate travel within the metropolitan planning area of the nonattainment area. Such a model shall possess all of the following attributes:
 - a. The modeling methods and the functional relationships used in the model shall in all respects be in accordance with acceptable professional practice and reasonable for purposes of emission estimation.
 - b. The network-based model shall be validated against ground counts for a base year that is not more than 10 years prior to the date of the conformity determination. Land use, population, and other inputs shall be based on the best available information and appropriate to the validation base year.
 - c. For peak-hour or peak-period traffic assignments, a capacity sensitive assignment methodology shall be used.
 - d. Zone-to-zone travel times used to distribute trips between origin and destination pairs shall be in reasonable agreement with the travel times which result from the process of assignment of trips to network links. Where use of transit currently is anticipated to be a significant factor in satisfying transportation demand, these times should also be used for modeling mode splits.
 - e. Free-flow speeds on network links shall be based on empirical observations.
 - f. Peak and off-peak travel demand and travel times shall be provided.
 - g. Trip distribution and mode choice shall be sensitive to pricing, where pricing is a significant factor, if the network model is capable of such determinations and the necessary information is available.
 - h. The model shall utilize and document a logical correspondence between the assumed scenario of land development and use and the future transportation system for which emissions are being estimated. Reliance on a formal land-use model is not specifically required but is encouraged.
 - i. A dependence of trip generation on the accessibility of destinations via the transportation system, including pricing, is strongly encouraged but not specifically required, unless the network model is capable of such determinations and the necessary information is available.
 - j. A dependence of regional economic and population growth on the accessibility of destinations via the transportation system is strongly encouraged but not specifically required, unless the network model is capable of such determinations and the necessary information is available.
 2. Highway Performance Monitoring System (HPMS) estimates of vehicle miles traveled shall be considered the primary measure of vehicle miles traveled within the portion of the nonattainment or maintenance area and for the functional classes of roadways included in HPMS, for urban areas which are sampled on a separate urban area basis. A factor or factors shall be developed to reconcile and calibrate the network-based model estimates of vehicle miles traveled in the base year of its validation to the HPMS estimates for the same period, and these factors shall be applied to model estimates of future vehicle miles traveled. In this factoring process, consideration will be given to differences in the facility coverage of the HPMS and the modeled network description. Departure from these procedures is permitted with the concurrence of USDOT and EPA.
 3. Reasonable methods shall be used to estimate nonattainment area vehicle travel on off-network roadways within the urban transportation planning area and on roadways outside the urban transportation planning area.
 4. Reasonable methods in accordance with good practice shall be used to estimate traffic speeds and delays in a manner that is sensitive to the estimated volume of travel on each roadway segment represented in the network model.
- C.** For areas which are not serious, severe, or extreme ozone nonattainment areas or serious carbon monoxide areas, or before January 1, 1995:
1. Procedures which satisfy some or all of the requirements of subsection (A) shall be used in all areas not subject to subsection (A) in which those procedures have been the previous practice of the MPO.
 2. Regional emissions may be estimated by methods which do not explicitly or comprehensively account for the influence of land use and transportation infrastructure on vehicle miles traveled and traffic speeds and congestion. Such methods shall account for VMT growth by extrapolating historical VMT or projecting future VMT by considering growth in population and historical growth trends for vehicle miles travelled per person. These methods shall also consider future economic activity, transit alternatives, and transportation system policies.
- D.** This subsection applies to any nonattainment or maintenance area or any portion thereof which does not have a metropolitan transportation plan or TIP and whose projects are not part of the emissions analysis of any MPO's metropolitan transportation plan or TIP (because the nonattainment or maintenance area or portion thereof does not contain a metropolitan planning area or portion of a metropolitan planning area and is not part of a Metropolitan Statistical Area or Consolidated Metropolitan Statistical Area which is or contains a nonattainment or maintenance area).
1. Conformity demonstrations for projects in these areas may satisfy the requirements of R18-2-1420, R18-2-1424, and R18-2-1427 with one regional emissions analysis which includes all the regionally significant transportation projects in the nonattainment or maintenance area or portion thereof.
 2. The requirements of R18-2-1420 shall be satisfied according to the procedures in R18-2-1420(C), with ref-

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erences to the “transportation plan” taken to mean the statewide transportation plan.

3. The requirements of R18-2-1424 and R18-2-1427 which reference “transportation plan” or “TIP” shall be taken to mean those projects in the statewide transportation plan or statewide TIP which are in the nonattainment or maintenance area or portion thereof.
4. The requirement of R18-2-1429(A)(2) shall be satisfied if all of the following are met:
 - a. The project is included in the regional emissions analysis which includes all regionally significant highway and transportation projects in the nonattainment or maintenance area or portion thereof and supports the most recent conformity determination made according to the requirements of R18-2-1420, R18-2-1424 or R18-2-1427 (as modified by subsections (D)(2) and (D)(3)), as appropriate for the time period and pollutant.
 - b. The project’s design concept and scope have not changed significantly from those which were included in the regional emissions analysis or in a manner which would significantly impact use of the facility.
- E. For areas in which the implementation plan does not identify construction-related fugitive PM₁₀ as a contributor to the nonattainment problem, the fugitive PM₁₀ emissions associated with highway and transit project construction are not required to be considered in the regional emissions analysis.
- F. In PM₁₀ nonattainment and maintenance areas with implementation plans which identify construction-related fugitive PM₁₀ as a contributor to the nonattainment problem, the regional PM₁₀ emissions analysis shall consider construction-related fugitive PM₁₀ and shall account for the level of construction activity, the fugitive PM₁₀ control measures in the applicable implementation plan, and the dust-producing capacity of the proposed activities.

Historical Note

Adopted effective June 15, 1995 (Supp. 95-2).

R18-2-1431. Procedures for Determining Localized CO and PM₁₀ Concentrations (Hot-spot Analysis)

- A. In the following cases, CO hot-spot analyses shall be based on the applicable air quality models, data bases, and other requirements specified in 40 CFR 51 Appendix W (“Guideline on Air Quality Models (Revised)” (1988), supplement (A) (1987) and supplement (B) (1993), EPA publication no. 450/2-78-027R, incorporated by reference and on file with the Department and with the Secretary of State), unless, after the interagency consultation process described in R18-2-1405 and with the approval of the EPA Regional Administrator, these models, data bases, and other requirements are determined to be inappropriate:
 1. For projects in or affecting locations, areas, or categories of sites which are identified in the applicable implementation plan as sites of current violation or possible current violation;
 2. For those intersections at Level-of-Service D, E, or F, or those that will change to Level-of-Service D, E, or F because of increased traffic volumes related to a new project in the vicinity;
 3. For any project involving or affecting any of the intersections which the applicable implementation plan identifies as the top three intersections in the nonattainment or maintenance area based on the highest traffic volumes;
 4. For any project involving or affecting any of the intersections which the applicable implementation plan identifies

as the top three intersections in the nonattainment or maintenance area based on the worst Level-of-Service;

5. Where use of the “Guideline” models is practicable and reasonable given the potential for violations.
- B. In cases other than those described in subsection (A), other quantitative methods may be used if they represent reasonable and common professional practice.
- C. CO hot-spot analyses shall include the entire project and may be performed only after the major design features which will significantly impact CO concentrations have been identified. The background concentration may be estimated using the ratio of future to current traffic multiplied by the ratio of future to current emission factors.
- D. PM₁₀ hot-spot analysis shall be performed for projects which are located at sites at which violations have been verified by monitoring, and at sites which have essentially identical vehicle and roadway emission and dispersion characteristics (including sites near one at which a violation has been monitored). The projects which require PM₁₀ hot-spot analysis shall be determined through the interagency consultation process required in R18-2-1405. In PM₁₀ nonattainment and maintenance areas, new or expanded bus and rail terminals and transfer points which increase the number of diesel vehicles congregating at a single location require hot-spot analysis. USDOT may choose to make a categorical conformity determination on bus and rail terminals or transfer points based on appropriate modeling of various terminal sizes, configurations, and activity levels. The requirements of this subsection for quantitative hot-spot analysis will not take effect until EPA releases modeling guidance on this subject and announces in the Federal Register that these requirements are in effect.
- E. Hot-spot analysis assumptions shall be consistent with those in the regional emissions analysis for those inputs which are required for both analyses.
- F. PM₁₀ or CO mitigation or control measures shall be assumed in the hot-spot analysis only where there are enforceable written commitments from the project sponsor or operator to the implementation of such measures, as required by R18-2-1433(A).
- G. CO and PM₁₀ hot-spot analyses are not required to consider construction-related activities which cause temporary increases in emissions. Each site which is affected by construction-related activities shall be considered separately, using established “Guideline” methods. Temporary increases are defined as those which occur only during the construction phase and last five years or less at any individual site.

Historical Note

Adopted effective June 15, 1995 (Supp. 95-2).

R18-2-1432. Using the Motor Vehicle Emissions Budget in the Applicable Implementation Plan or Implementation Plan Submission

- A. In interpreting an applicable implementation plan or implementation plan submission with respect to its motor vehicle emissions budget, ADOT or the MPO where one exists and USDOT may not infer additions to the budget that are not explicitly intended by the implementation plan or submission. Unless the implementation plan explicitly quantifies the amount by which motor vehicle emissions could be higher while still allowing a demonstration of compliance with the milestone, attainment, or maintenance requirement and explicitly states an intent that some or all of this additional amount should be available to ADOT or the MPO and USDOT in the emission budget for conformity purposes, ADOT or the MPO may not interpret the budget to be higher than the implementation plan’s estimate of future emissions. This applies in partic-

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ular to applicable implementation plans or submissions which demonstrate that after implementation of control measures in the implementation plan any of the following apply:

1. Emissions from all sources will be less than the total emissions that would be consistent with a required demonstration of an emissions reduction milestone.
 2. Emissions from all sources will result in achieving attainment prior to the attainment deadline or ambient concentrations in the attainment deadline year will be lower than needed to demonstrate attainment.
 3. Emissions will be lower than needed to provide for continued maintenance.
- B.** If an applicable implementation plan submitted before November 24, 1993, demonstrates that emissions from all sources will be less than the total emissions that would be consistent with attainment and quantifies that "safety margin," the state may submit a SIP revision which assigns some or all of this safety margin to highway and transit mobile sources for the purposes of conformity. Such a SIP revision, once it is endorsed by the governor and has been subject to a public hearing, may be used for the purposes of transportation conformity before it is approved by EPA.
- C.** A conformity demonstration shall not trade emissions among budgets which the applicable implementation plan or implementation plan submission allocates for different pollutants or precursors, or among budgets allocated to motor vehicles and other sources, without a SIP revision or a SIP which establishes mechanisms for such trades.
- D.** If the applicable implementation plan or implementation plan submission estimates future emissions by geographic subarea of the nonattainment area, ADOT or the MPO where one exists and USDOT are not required to consider this to establish subarea budgets, unless the applicable implementation plan or implementation plan submission explicitly indicates an intent to create such subarea budgets for the purposes of conformity.
- E.** If a nonattainment area includes more than one MPO, the SIP may establish motor vehicle emissions budgets for each MPO. Otherwise, the MPOs shall collectively make a conformity determination for the entire nonattainment area.

Historical Note

Adopted effective June 15, 1995 (Supp. 95-2).

R18-2-1433. Enforceability of Design Concept and Scope and Project-level Mitigation and Control Measures

- A.** Prior to determining that a transportation project is in conformity, ADOT, the MPO where one exists, other recipient of funds designated under 23 U.S.C. or the Federal Transit Act, FHWA, or FTA shall obtain from the project sponsor or operator enforceable written commitments to implement in the construction of the project and operation of the resulting facility or service any project-level mitigation or control measures which are identified as conditions for NEPA process completion with respect to local PM₁₀ or CO impacts. Before making conformity determinations enforceable written commitments shall also be obtained for project-level mitigation or control measures which are conditions for making conformity determinations for a transportation plan or TIP and included in the project design concept and scope which is used in the regional emissions analysis required by R18-2-1418 through R18-2-1420 and R18-2-1422 through R18-2-1424 or used in the project-level hot-spot analysis required by R18-2-1416 and R18-2-1421.
- B.** Project sponsors voluntarily committing to mitigation measures to facilitate positive conformity determinations shall provide enforceable written commitments and comply with the obligations of such commitments.

- C.** Enforceable written commitments to mitigation or control measures shall be obtained prior to a positive conformity determination, and that project sponsors shall comply with such commitments.
- D.** During the control strategy and maintenance periods, if ADOT, the MPO, or project sponsor believes the mitigation or control measure is no longer necessary for conformity, the project sponsor or operator may be relieved of its obligation to implement the mitigation or control measure if it can demonstrate that the requirements of R18-2-1416, R18-2-1418, and R18-2-1419 are satisfied without the mitigation or control measure and so notifies the agencies involved in the inter-agency consultation process required under R18-2-1405. ADOT or the MPO where one exists and USDOT shall confirm that the transportation plan and TIP still satisfy the requirements of R18-2-1418 and R18-2-1419 and that the project still satisfies the requirements of R18-2-1416, and therefore that the conformity determinations for the transportation plan, TIP, and project are still valid.

Historical Note

Adopted effective June 15, 1995 (Supp. 95-2).

R18-2-1434. Exempt Projects

Notwithstanding the other requirements of this subpart, highway and transit projects of the types listed in Table 2 are exempt from the requirement that a conformity determination be made. Such projects may proceed toward implementation even in the absence of a conforming transportation plan and TIP. A particular action of the type listed in Table 2 is not exempt if ADOT or the MPO where one exists in consultation with other agencies pursuant to R18-2-1405, the EPA, and the FHWA (in the case of a highway project) or the FTA (in the case of a transit project) concur that it has potentially adverse emissions impacts for any reason. States and MPOs shall ensure that exempt projects do not interfere with TCM implementation.

Table 2. Exempt Projects
Exempt Projects
SAFETY

1. Railroad or highway crossing.
2. Hazard elimination program.
3. Safer non-federal-aid system roads.
4. Shoulder improvements.
5. Increasing sight distance.
6. Safety improvement program.
7. Traffic control devices and operating assistance other than signalization projects.
8. Railroad or highway crossing warning devices.
9. Guardrails, median barriers, crash cushions.
10. Pavement resurfacing or rehabilitation.
11. Pavement marking demonstration.
12. Emergency relief (23 U.S.C. 125).
13. Fencing.
14. Skid treatments.
15. Safety roadside rest areas.
16. Adding medians.
17. Truck climbing lanes outside the urbanized area.
18. Lighting improvements.
19. Widening narrow pavements or reconstructing bridges (no additional travel lanes).
20. Emergency truck pullovers.

MASS TRANSIT

1. Operating assistance to transit agencies.
2. Purchase of support vehicles.
3. Rehabilitation of transit vehicles. (In PM₁₀ nonattainment or maintenance areas, such projects are exempt only if they are in

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- compliance with control measures in the applicable implementation plan.)
4. Purchase of office, shop, and operating equipment for existing facilities.
 5. Purchase of operating equipment for vehicles (e.g., radios, fareboxes, lifts, etc.).
 6. Construction or renovation of power, signal, and communications systems.
 7. Construction of small passenger shelters and information kiosks.
 8. Reconstruction or renovation of transit buildings and structures (e.g., rail or bus buildings, storage and maintenance facilities, stations, terminals, and ancillary structures).
 9. Rehabilitation or reconstruction of track structures, track, and trackbed in existing rights-of-way.
 10. Purchase of new buses and rail cars to replace existing vehicles or for minor expansions of the fleet. (In PM₁₀ nonattainment or maintenance areas, such projects are exempt only if they are in compliance with control measures in the applicable implementation plan.)
 11. Construction of new bus or rail storage or maintenance facilities categorically excluded in 23 CFR 771.

AIR QUALITY

1. Continuation of ride-sharing and van-pooling promotion activities at current levels.
2. Bicycle and pedestrian facilities.

OTHER

1. Specific activities which do not involve or lead directly to construction, such as:
 - a. Planning and technical studies.
 - b. Grants for training and research programs.
 - c. Planning activities conducted pursuant to Titles 23 and 49 U.S.C.
 - d. Federal-aid systems revisions.
2. Engineering to assess social, economic and environmental effects of the proposed action or alternatives to that action.
3. Noise attenuation.
4. Advance land acquisitions (23 CFR 712 or 23 CFR 771).
5. Acquisition of scenic easements.
6. Plantings, landscaping, etc.
7. Sign removal.
8. Directional and informational signs.
9. Transportation enhancement activities (except rehabilitation and operation of historic transportation buildings, structures, or facilities).
10. Repair of damage caused by natural disasters, civil unrest, or terrorist acts, except projects involving substantial functional, locational or capacity changes.

Historical Note

Adopted effective June 15, 1995 (Supp. 95-2).

R18-2-1435. Projects Exempt from Regional Emissions Analyses

Notwithstanding the other requirements of this subpart, highway and transit projects of the types listed in Table 3 are exempt from regional emissions analysis requirements. The local effects of these projects with respect to CO or PM₁₀ concentrations shall be considered to determine if a hot-spot analysis is required prior to making a project-level conformity determination. These projects may then proceed to the project development process even in the absence of a conforming transportation plan and TIP. A particular action of the type listed in Table 3 is not exempt from regional emissions analysis if the MPO in consultation with other agencies pursuant to R18-2-1405, the EPA, and the FHWA (in the case of a highway project)

or the FTA (in the case of a transit project) concur that it has potential regional impacts for any reason.

Table 3. Projects Exempt From Regional Emissions Analyses**Projects Exempt From Regional Emissions Analyses**

1. Intersection channelization projects.
2. Intersection signalization projects at individual intersections.
3. Interchange reconfiguration projects.
4. Changes in vertical and horizontal alignment.
5. Truck size and weight inspection stations.
6. Bus terminals and transfer points.

Historical Note

Adopted effective June 15, 1995 (Supp. 95-2).

R18-2-1436. Special Provisions for Nonattainment Areas Which are Not Required to Demonstrate Reasonable Further Progress and Attainment

- A. This Section applies in the following areas:
 1. Rural transport ozone nonattainment areas,
 2. Marginal ozone areas,
 3. Submarginal ozone areas,
 4. Transitional ozone areas,
 5. Incomplete data ozone areas,
 6. Moderate CO areas with a design value of 12.7 ppm or less,
 7. Not classified CO areas.
- B. The criteria and procedures in R18-2-1422 through R18-2-1424 will remain in effect throughout the control strategy period for transportation plans, TIPs, and projects (not from a conforming plan and TIP) in lieu of the procedures in R18-2-1418 through R18-2-1420, except as otherwise provided in subsection (C).
- C. The state or MPO may voluntarily develop an attainment demonstration and corresponding motor vehicle emissions budget like those required in areas with higher nonattainment classifications. In this case, the state shall submit an implementation plan revision which contains that budget and attainment demonstration. Once EPA has approved this implementation plan revision, the procedures in R18-2-1418 through R18-2-1420 apply in lieu of the procedures in R18-2-1422 through R18-2-1424.

Historical Note

Adopted effective June 15, 1995 (Supp. 95-2).

R18-2-1437. Reserved**R18-2-1438. General Conformity for Federal Actions**

The following subparts of 40 CFR 93, Determining Conformity of Federal Actions to State or Federal Implementation Plans, and all accompanying appendices, adopted as of July 1, 1994, and no future editions, are incorporated by reference. These standards are on file with the Office of the Secretary of State and with the Department and shall be applied by the Department.

Subpart B - Determining Conformity of General Federal Actions to State or Federal Implementation Plans (58 FR 63253, November 30, 1993).

Historical Note

Adopted effective January 31, 1995 (Supp. 95-1).

ARTICLE 15. FOREST AND RANGE MANAGEMENT BURNS**R18-2-1501. Definitions**

In addition to the definitions contained in A.R.S. § 49-501 and R18-2-101, in this Article:

1. "Activity fuels" means those fuels created by human activities such as thinning or logging.

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2. "ADEQ" means the Department of Environmental Quality.
3. "Annual emissions goal" means the annual establishment in cooperation with the F/SLMs, under R18-2-1503(G), of a planned quantifiable value of emissions reduction from prescribed fires and fuels management activities.
4. "Burn plan" means the ADEQ form that includes information on the conditions under which a burn will occur with details of the burn and smoke management prescriptions.
5. "Burn prescription" means, with regard to a burn project, the pre-determined area, fuel, and weather conditions required to attain planned resource management objectives.
6. "Burn project" means an active or planned prescribed burn, including a wildland fire use incident.
7. "Duff" means forest floor material consisting of decomposing needles and other natural materials.
8. "Emission reduction techniques (ERT)" means methods for controlling emissions from prescribed fires to minimize the amount of emission output per unit of area burned.
9. "Federal land manager (FLM)" means any department, agency, or agent of the federal government, including the following:
 - a. United States Forest Service,
 - b. United States Fish and Wildlife Service,
 - c. National Park Service,
 - d. Bureau of Land Management,
 - e. Bureau of Reclamation,
 - f. Department of Defense,
 - g. Bureau of Indian Affairs, and
 - h. Natural Resources Conservation Service.
10. "F/SLM" means a federal land manager or a state land manager.
11. "Local fire management officer" means a person designated by a F/SLM as responsible for fire management in a local district or area.
12. "Mop-up" means the act of extinguishing or removing burning material from a prescribed fire to reduce smoke impacts.
13. "National Wildfire Coordinating Group" means the national inter-agency group of federal and state land managers that shares similar wildfire suppression programs and has established standardized inter-agency training courses and qualifications for fire management positions.
14. "Non-burning alternatives to fire" means techniques that replace fire for at least five years as a means to treat activity fuels created to achieve a particular land management objective (e.g., reduction of fuel-loading, manipulation of fuels, enhancement of wildlife habitat, and ecosystem restoration). These alternatives are not used in conjunction with fire. Techniques used in conjunction with fire are referred to as emission reduction techniques (ERTs).
15. "Planned resource management objectives" means public interest goals in support of land management agency objectives including silviculture, wildlife habitat management, grazing enhancement, fire hazard reduction, wilderness management, cultural scene maintenance, weed abatement, watershed rehabilitation, vegetative manipulation, and disease and pest prevention.
16. "Prescribed burning" means the controlled application of fire to wildland fuels that are in either a natural or modified state, under certain burn and smoke management prescription conditions that have been specified by the land manager in charge of or assisting the burn, to attain planned resource management objectives. Prescribed burning does not include a fire set or permitted by a public officer to provide instruction in fire fighting methods, or construction or residential burning under R18-2-602.
17. "Prescribed fire manager" means a person designated by a F/SLM as responsible for prescribed burning for that land manager.
18. "Smoke management prescription" means the predetermined meteorological conditions that affect smoke transport and dispersion under which a burn could occur without adversely affecting public health and welfare.
19. "Smoke management techniques (SMT)" means management and dispersion practices used during a prescribed burn or wildland fire use incident which affect the direction, duration, height, or density of smoke.
20. "Smoke management unit" means any of the geographic areas defined by ADEQ whose area is based on primary watershed boundaries and whose outline is determined by diurnal windflow patterns that allow smoke to follow predictable drainage patterns. A map of the state divided into the smoke management units is on file with ADEQ.
21. "State land manager (SLM)" means any department, agency, or political subdivision of the state government including the following:
 - a. State Land Department,
 - b. Department of Transportation,
 - c. Department of Game and Fish, and
 - d. Parks Department.
22. "Wildfire" means an unplanned wildland fire subject to appropriate control measures. Wildfires include those incidents where suppression may be limited for safety, economic, or resource concerns.
23. "Wildland fire use" means a wildland fire that is ignited by natural causes, such as lightning, and is managed using the same controls and for the same planned resource management objectives as prescribed burning.

Historical Note

Adopted effective October 8, 1996 (Supp. 96-4).
Amended by final rulemaking at 10 A.A.R. 388, effective March 16, 2004 (Supp. 04-1).

R18-2-1502. Applicability

- A. A F/SLM that is conducting or assisting a prescribed burn shall follow the requirements of this Article.
- B. A private or municipal burner with whom ADEQ has entered into a memorandum of agreement shall follow the requirements of this Article.
- C. The provisions of this Article apply to all areas of the state except Indian Trust lands. All federally managed lands and all state lands, parks, and forests are under the jurisdiction of ADEQ in matters relating to air pollution from prescribed burning.
- D. Notwithstanding subsection (C), ADEQ and any Indian tribe may enter into a memorandum of agreement to implement this Article.
- E. ADEQ and any private or municipal prescribed burner may enter into a memorandum of agreement to implement this Article.

Historical Note

Adopted effective October 8, 1996 (Supp. 96-4).
Amended by final rulemaking at 10 A.A.R. 388, effective March 16, 2004 (Supp. 04-1).

R18-2-1503. Annual Registration, Program Evaluation and Planning

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- A. Each F/SLM shall register annually with ADEQ on a form prescribed by ADEQ, all planned burn projects, including areas planned for wildland fire use.
- B. Each planned year extends from January 1 of the registration year to December 31 of the same year. Each F/SLM shall use best efforts to register before December 31 and no later than January 31 of each year.
- C. A F/SLM shall include the following information on the registration form:
1. The F/SLM's name, address, and business telephone number;
 2. The name, address, and business telephone number of an air quality representative who will provide technical support to ADEQ for decisions regarding prescribed burning. The same air quality representative may be selected by more than one F/SLM;
 3. All prescribed burn projects and potential wildland fire use areas planned for the next year;
 4. Maximum project and annual acres to be burned, maximum daily acres to be burned, fuel types within project area, and planned use of emission reduction techniques to support the annual emissions goal for each prescribed burn project;
 5. Planned use of any smoke management techniques for each prescribed burn project;
 6. Maximum project and annual acres projected to be burned, maximum daily acres projected to be burned, and a map of the anticipated project area, fuel types and loading within the planned area for an area the F/SLM anticipates for wildland fire use;
 7. A list of all burn projects that were completed during the previous year;
 8. Project area for treatment, treatment type, fuel types to be treated, and activity fuel loading to support the annual emissions goal for areas to be treated using non-burning alternatives to fire; and
 9. The area treated using non-burning alternatives to fire during the previous year including the number of acres, the specific types of alternatives utilized, and the location of these areas.
- D. After consultation with the F/SLM, ADEQ may request additional information for registration of prescribed burns and wildland fire use to support regional coordination of smoke management, annual emission goal setting using ERTs, and non-burning alternatives to fire.
- E. A F/SLM may amend a registration at any time with a written submission to ADEQ.
- F. ADEQ accepts a facsimile or other electronic method as a means of complying with the deadline for registration. If an electronic means is used, the F/SLM shall deliver the original paper registration form to ADEQ for its records. ADEQ shall acknowledge in writing the receipt of each registration.
- G. ADEQ shall hold a meeting after January 31 and before April 1 of each year between ADEQ and F/SLMs to evaluate the program and cooperatively establish the annual emission goal. The annual emission goal shall be developed to minimize prescribed fire emissions to the maximum extent feasible using emission reduction techniques and alternatives to burning subject to economic, technical, and safety feasibility criteria, and consistent with land management objectives.
- H. At least once every five years, ADEQ shall request long-term projections of future prescribed fire and wildland fire use activity from the F/SLMs to support planning for visibility impairment and assessment of other air quality concerns by ADEQ.

Historical Note

Adopted effective October 8, 1996 (Supp. 96-4).
Amended by final rulemaking at 10 A.A.R. 388, effective March 16, 2004 (Supp. 04-1).

R18-2-1504. Prescribed Burn Plan

Each F/SLM planning a prescribed burn shall complete and submit to ADEQ the "Burn Plan" form supplied by ADEQ no later than 14 days before the date on which the F/SLM requests permission to burn. ADEQ shall consider the information supplied on the Burn Plan Form as binding conditions under which the burn shall be conducted. A Burn Plan shall be maintained by ADEQ until notification from the F/SLM of the completion of the burn project. Revisions to the Burn Plan for a burn project shall be submitted in writing no later than 14 days before the date on which the F/SLM requests permission to burn. To facilitate the Daily Burn authorization process under R18-2-1505, the F/SLM shall include on the Burn Plan form:

1. An emergency telephone number that is answered 24 hours a day, seven days a week;
2. Burn prescription;
3. Smoke management prescription;
4. The number of acres to be burned, the quantity and type of fuel, type of burn, and the ignition technique to be used;
5. The land management objective or purpose for the burn such as restoration or maintenance of ecological function and indicators of fire resiliency;
6. A map depicting the potential impact of the smoke unless waived either orally or in writing by ADEQ. The potential impact shall be determined by mapping both the daytime and nighttime smoke path and down-drainage flow for 15 miles from the burn site, with smoke-sensitive areas delineated. The map shall use the appropriate scale to show the impacts of the smoke adequately;
7. Modeling of smoke impacts unless waived either orally or in writing by ADEQ, for burns greater than 250 acres per day, or greater than 50 acres per day if the burn is within 15 miles of a Class I Area, an area that is non-attainment for particulates, a carbon monoxide non-attainment area, or other smoke-sensitive area. In consultation with the F/SLM, ADEQ shall provide guidelines on modeling;
8. The name of the official submitting the Burn Plan on behalf of the F/SLM; and
9. After consultation with the F/SLM, any other information to support the Burn Plan needed by ADEQ to assist in the Daily Burn authorization process for smoke management purposes or assessment of contribution to visibility impairment of Class I areas.

Historical Note

Adopted effective October 8, 1996 (Supp. 96-4).
Amended by final rulemaking at 10 A.A.R. 388, effective March 16, 2004 (Supp. 04-1).

R18-2-1505. Prescribed Burn Requests and Authorization

- A. Each F/SLM planning a prescribed burn, shall complete and submit to ADEQ the "Daily Burn Request" form supplied by ADEQ. The Daily Burn Request form shall include:
1. The contact information of the F/SLM conducting the burn;
 2. Each day of the burn;
 3. The area to be burned on the day for which the Burn Request is submitted, with reference to the Burn Plan, including size, legal location to the section, and latitude and longitude to the minute;
 4. Projected smoke impacts; and

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5. Any local conditions or circumstances known to the F/SLM that, if conveyed to ADEQ, could impact the Daily Burn authorization process.
 - B. After consultation with the F/SLM, ADEQ may request additional information related to the burn, meteorological, smoke dispersion, or air quality conditions to supplement the Daily Burn Request form and to aid in the Daily Burn authorization process.
 - C. The F/SLM shall submit the Daily Burn Request form to ADEQ as expeditiously as practicable, but no later than 2:00 p.m. of the business day preceding the burn. An original form, a facsimile, or an electronic information transfer are acceptable submittals.
 - D. An F/SLM shall not ignite a prescribed burn without receiving the approval of ADEQ, as follows:
 1. ADEQ shall approve, approve with conditions, or disapprove a burn on the same business day as the Burn Request submittal.
 2. If ADEQ fails to address a Burn Request by 10:00 p.m. of the business day on which the request is submitted, the Burn Request is approved by default after the burner makes a good faith effort to contact ADEQ to confirm that the Burn Request was received.
 3. ADEQ may communicate its decision by verbal, written, or electronic means. ADEQ shall provide a written or electronic reply if requested by the F/SLM.
 - E. If weather conditions cease to conform to those in the smoke management prescription of either the Burn Plan or an Approval with Conditions, the F/SLM shall take appropriate action to reduce further smoke impacts, ensure safe and appropriate fire control, and notify the public when necessary. After consultation with ADEQ, the smoke management prescription or burn plan may be modified.
 - F. The F/SLM shall ensure that there is appropriate signage and notification to protect public safety on transportation corridors including roadways and airports during a prescribed fire.
- monoxide non-attainment areas, or other smoke-sensitive areas; and
12. Protection of the National Ambient Air Quality Standards.

Historical Note

Adopted effective October 8, 1996 (Supp. 96-4).
Amended by final rulemaking at 10 A.A.R. 388, effective March 16, 2004 (Supp. 04-1).

R18-2-1507. Prescribed Burn Accomplishment; Wildfire Reporting

- A. Each F/SLM conducting a prescribed burn shall complete and submit to ADEQ the "Burn Accomplishment" form supplied by ADEQ. For each burn approval, the F/SLM shall submit a Burn Accomplishment form to ADEQ by 2:00 p.m. of the business day following the approved burn. The F/SLM shall include the following information on the Burn Accomplishment form:
 1. Any known conditions or circumstances that could impact the Daily Burn decision process;
 2. The date, location, fuel type, fuel loading, and acreage accomplishments;
 3. The ERTs and SMTs described in R18-2-1509 and R18-2-1510, respectively, and may include any further ERTs and SMTs that become available, that the F/SLM used to reduce emissions or manage the smoke from the burn.
- B. The F/SLM shall submit the Burn Accomplishment form as an original form, a facsimile, or an electronic information transfer.
- C. ADEQ shall maintain a record of Burn Requests, Burn Approvals/Conditional Approvals/Denials and Burn Accomplishments for five years.
- D. The F/SLM in whose jurisdiction a wildfire occurs shall make available to ADEQ no later than the day after the activity all required information for wildfire incidents that burned more than 100 acres per day in timber or slash fuels or 300 acres per day in brush or grass fuels. For each day of a wildfire incident that exceeds the daily activity threshold, the F/SLM shall provide the location, an estimate of predominant fuel type and quantity consumed, and an estimate of the area blackened that day.

Historical Note

Adopted effective October 8, 1996 (Supp. 96-4).
Amended by final rulemaking at 10 A.A.R. 388, effective March 16, 2004 (Supp. 04-1).

R18-2-1506. Smoke Dispersion Evaluation

ADEQ shall approve, approve with conditions, or disapprove a Daily Burn Request submitted under R18-2-1505, by using the following factors for each smoke management unit:

1. Analysis of the emissions from burns in progress and residual emissions from previous burns on a day-to-day basis;
2. Analysis of emissions from active wildland fire use incidents, and active multiple-day burns, and consideration of potential long-term emissions estimates;
3. Analysis of the emissions from wildfires greater than 100 acres and consideration of their potential long-term growth;
4. Local burn conditions;
5. Burn prescription and smoke management prescription from the applicable Burn Plan;
6. Existing and predicted local air quality;
7. Local and synoptic meteorological conditions;
8. Type and location of areas to be burned;
9. Protection of the national visibility goal for Class I Areas under § 169A(a)(1) of the Act and 40 CFR 51.309;
10. Assessment of duration and intensity of smoke emissions to minimize cumulative impacts;
11. Minimization of smoke impacts in Class I Areas, areas that are non-attainment for particulate matter, carbon

R18-2-1508. Wildland Fire Use: Plan, Authorization, Monitoring; Inter-agency Consultation; Status Reporting

- A. In order for ADEQ to participate in the wildland fire use decision-making process, the F/SLM shall notify ADEQ as soon as practicable of any wildland fire use incident projected to attain or attaining a size of 50 acres of timber fuel or 250 acres of brush or grass fuel.
- B. For each wildland fire use incident that has been declared as such by the F/SLM, the F/SLM shall complete and submit to ADEQ a Wildland Fire Use Burn Plan in a format approved by ADEQ in cooperation with the F/SLM. The F/SLM shall submit the Wildland Fire Use Burn Plan to ADEQ as soon as practicable but no later than 72 hours after the wildland fire use incident is declared or under consideration for such designation. The F/SLM shall include the following information in the Wildland Fire Use Burn Plan:
 1. An emergency telephone number that is answered 24 hours a day, seven days a week;
 2. Anticipated burn prescription;
 3. Anticipated smoke management prescription;

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4. The estimated daily number of acres, quantity, and type of fuel to be burned;
 5. The anticipated maximum allowable perimeter or size with map;
 6. Information on the condition of the area to be burned, such as whether it is in maintenance or restoration, its ecological function, and other indicators of fire resiliency;
 7. The anticipated duration of the wildland fire use incident;
 8. The anticipated long-range weather trends for the site;
 9. A map depicting the potential impact of the smoke. The potential impact shall be determined by mapping both the daytime and nighttime smoke path and down-drainage flow for 15 miles from the wildland fire use incident, with smoke-sensitive areas delineated. Mapping is mandatory unless waived either orally or in writing by ADEQ. The map shall use the appropriate scale to show the impacts of the smoke adequately; and
 10. Modeling or monitoring of smoke impacts, if requested by ADEQ after consultation with the F/SLM.
- C.** ADEQ shall approve or disapprove a Wildland Fire Use Burn Plan within three hours of receipt. ADEQ shall consult directly with the requesting F/SLM before disapproving a Wildland Fire Use Burn Plan. If ADEQ fails to address the Wildland Fire Use Burn Plan within the time allotted, the Plan is approved by default under the condition that the F/SLM makes a good faith effort to contact ADEQ to confirm that the Plan was received. Approval by ADEQ of a Wildland Fire Use Burn Plan is binding upon ADEQ for the duration of the wildland fire use incident, unless smoke from the incident creates a threat to public health or welfare. If a threat to public health or welfare is created, ADEQ shall consult with the F/SLM regarding the situation and develop a joint action plan for reducing further smoke impacts.
- D.** The F/SLM shall submit a Daily Status Report for each wildland fire use incident to ADEQ for each day of the burn that the fire burns more than 100 acres in timber or slash fuels or 300 acres in brush or grass fuels. The F/SLM shall include a synopsis of smoke behavior, future daily anticipated growth, and location of the activity of the wildland fire use incident in the Daily Status Report.
- E.** The F/SLM shall consult with ADEQ prior to initiating human-made ignition on the wildland fire use incident when greater than 250 acres is anticipated to be burned by the ignition. Emergency human-made ignition on the incident for protection of public or fire-fighter safety does not require consultation with ADEQ regardless of the size of the area to be burned.
- F.** The F/SLM shall ensure that there is appropriate signage and notification to protect public safety on transportation corridors including roadways and airports during a wildland fire use incident.

Historical Note

Adopted effective October 8, 1996 (Supp. 96-4).
Amended by final rulemaking at 10 A.A.R. 388, effective March 16, 2004 (Supp. 04-1).

R18-2-1509. Emission Reduction Techniques

- A.** Each F/SLM conducting a prescribed burn shall implement as many Emission Reduction Techniques as are feasible subject to economic, technical, and safety feasibility criteria, and land management objectives.
- B.** Emission Reduction Techniques include:
1. Reducing biomass to be burned by use of techniques such as yarding or consolidation of unmerchandisable mate-

- rial, multi-product timber sales, or public firewood access, when economically feasible;
2. Reducing biomass to be burned by fuel exclusion practices such as preventing the fire from consuming dead snags or dead and downed woody material through lining, application of fire-retardant foam, or water;
3. Using mass ignition techniques such as aerial ignition by helicopter to produce high intensity fires of high fuel density areas such as logging slash decks;
4. Burning only fuels essential to meet resource management objectives;
5. Minimizing consumption and smoldering by burning under conditions of high fuel moisture of duff and litter;
6. Minimizing fuel consumption and smoldering by burning under conditions of high fuel moisture of large woody fuels;
7. Minimizing soil content when slash piles are constructed by using brush blades on material-moving equipment and by constructing piles under dry soil conditions or by using hand piling methods;
8. Burning fuels in piles;
9. Using a backing fire in grass fuels;
10. Burning fuels with an air curtain destructor, as defined in R18-2-101, operated according to manufacturer specifications and meeting applicable state or local opacity requirements;
11. Extinguishing or mopping-up of smoldering fuels;
12. Chunking of piles and other consolidations of burning material to enhance flaming and fuel consumption, and to minimize smoke production;
13. Burning before litter fall;
14. Burning before green-up of fuels;
15. Burning before recently cut large fuels cure in areas with activity; and
16. Burning just before precipitation to reduce fuel smoldering and consumption.

Historical Note

Adopted effective October 8, 1996 (Supp. 96-4).
Amended by final rulemaking at 10 A.A.R. 388, effective March 16, 2004 (Supp. 04-1).

R18-2-1510. Smoke Management Techniques

- A.** Each F/SLM conducting a prescribed burn shall implement as many Smoke Management Techniques as are feasible subject to economic, technical, and safety feasibility criteria, and land management objectives.
- B.** Smoke management techniques include:
1. Burning from March 15 through September 15, when meteorological conditions allow for good smoke dispersion;
 2. Igniting burns under good-to-excellent ventilation conditions;
 3. Suspending operations under poor smoke dispersion conditions;
 4. Considering smoke impacts on local community activities and land users;
 5. Burning piles when other burns are not feasible, such as when snow or rain is present;
 6. Using mass ignition techniques such as aerial ignition by helicopter to produce high intensity fires with short duration impacts;
 7. Using all opportunities that meet the burn prescription and all burn locations to spread smoke impacts over a broader time period and geographic area;
 8. Burning during optimum mid-day dispersion hours, with all ignitions in a burn unit completed by 3:00 p.m. to pre-

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vent trapping smoke in inversions or diurnal windflow patterns;

9. Providing information on the adverse impacts of using green or wet wood as fuel when public firewood access is allowed;
10. Implementing maintenance burning in a periodic rotation to shorten prescribed fire duration and to reduce excessive fuel accumulations that could result in excessive smoke production in a wildfire; and
11. Using wildland fire-use strategies to shift smoke into more favorable smoke dispersion seasons.

Historical Note

Adopted effective October 8, 1996 (Supp. 96-4). Former Section R18-2-1510 renumbered to R18-2-1511; new R18-2-1510 made by final rulemaking at 10 A.A.R. 388, effective March 16, 2004 (Supp. 04-1).

R18-2-1511. Monitoring

- A. ADEQ may require a F/SLM to monitor air quality before or during a prescribed burn or a wildland fire use incident if necessary to assess smoke impacts. Air quality monitoring may be conducted using both federal and non-federal reference method as well as other techniques.
- B. ADEQ may require a F/SLM to monitor weather before or during a prescribed burn or a wildland fire use incident, if necessary to predict or assess smoke impacts. After consultation with the F/SLM, ADEQ may also require the F/SLM to establish burn site or area-representative remote automated weather stations or their equivalent, having telemetry that allows retrieval on a real-time basis by ADEQ. An F/SLM shall give ADEQ notice and an opportunity to comment before making any change to a long-term established remote automated weather station.
- C. A F/SLM shall employ the following types of monitoring, unless waived by ADEQ, for burns greater than 250 acres per day, or greater than 50 acres per day if the burn is within 15 miles of a Class I Area, an area that is non-attainment for particulate matter, carbon monoxide, or ozone, or other smoke-sensitive area:
 1. Smoke plume measurements, using a format supplied by ADEQ; and
 2. The release of pilot balloons (PIBALs) at the burn site to verify needed wind speed, direction, and stability. Instead of pilot balloons, a test burn at the burn site may be used for specific prescribed burns on a case-by-case basis as approved by ADEQ, to verify needed wind speed, direction, and stability.
- D. An F/SLM shall make monitoring information required under subsection (C) available to ADEQ on the business day following the burn ignition.
- E. The F/SLM shall keep on file for one year following the burn date any monitoring information required under this Section.

Historical Note

Adopted effective October 8, 1996 (Supp. 96-4). Former Section R18-2-1511 renumbered to R18-2-1512; new R18-2-1511 renumbered from R18-2-1510 and amended by final rulemaking at 10 A.A.R. 388, effective March 16, 2004 (Supp. 04-1).

R18-2-1512. Burner Qualifications

- A. All burn projects shall be conducted by personnel trained in prescribed fire and smoke management techniques as required by the F/SLM in charge of the burn and established by National Wildfire Coordinating Group training qualifications.
- B. A Prescribed Fire Boss or other local Fire Management Officer of the F/SLM having jurisdiction over prescribed burns

shall have smoke management training obtained through one of the following:

1. Successful completion of a National Wildfire Coordinating Group or F/SLM-equivalent course addressing smoke management; or
2. Attendance at an ADEQ-approved smoke management workshop.

Historical Note

Adopted effective October 8, 1996 (Supp. 96-4). Former Section R18-2-1512 renumbered to R18-2-1513; new R18-2-1512 renumbered from R18-2-1511 and amended by final rulemaking at 10 A.A.R. 388, effective March 16, 2004 (Supp. 04-1).

R18-2-1513. Public Notification and Awareness Program; Regional Coordination

- A. The Director shall conduct a public education and awareness program in cooperation with F/SLMs and other interested parties to inform the general public of the smoke management program described by this Article. The program shall include smoke impacts from prescribed fires and the role of prescribed fire in natural ecosystems.
- B. ADEQ shall make annual registration, prescribed burn approval, and wildfire and wildland fire use activity information readily available to the public and to facilitate regional coordination efforts and public notification.

Historical Note

Adopted effective October 8, 1996 (Supp. 96-4). Former Section R18-2-1513 renumbered to R18-2-1514; new R18-2-1513 renumbered from R18-2-1512 and amended by final rulemaking at 10 A.A.R. 388, effective March 16, 2004 (Supp. 04-1).

R18-2-1514. Surveillance and Enforcement

- A. An F/SLM conducting a prescribed burn shall permit ADEQ to enter and inspect burn sites unannounced to verify the accuracy of the Daily Burn Request, Burn Plan, or Accomplishment data as well as matching burn approval with actual conditions, smoke dispersion, and air quality impacts. On-ground site inspection procedures and aerial surveillance shall be coordinated by ADEQ and the F/SLM for safety purposes.
- B. ADEQ may use remote automated weather station data if necessary to verify current and previous meteorological conditions at or near the burn site.
- C. ADEQ may audit burn accomplishment data, smoke dispersion measurements, or weather measurements from previously conducted burns, if necessary to verify conformity with, or deviation from, procedures and authorizations approved by ADEQ.
- D. Deviation from procedures and authorizations approved by ADEQ constitute a violation of this Article. Violations may require containment or mop-up of any active burns and may also require, in the Director's discretion, a five-day moratorium on ignitions by the responsible F/SLM. Violations of this Article are also subject to a civil penalty of not more than \$10,000 per day per violation under A.R.S. § 49-463.

Historical Note

Adopted effective October 8, 1996 (Supp. 96-4). Former Section R18-2-1514 repealed; new R18-2-1514 renumbered from R18-2-1513 and amended by final rulemaking at 10 A.A.R. 388, effective March 16, 2004 (Supp. 04-1).

R18-2-1515. Forms; Electronic Copies; Information Transfers

49-104. Powers and duties of the department and director

A. The department shall:

1. Formulate policies, plans and programs to implement this title to protect the environment.
2. Stimulate and encourage all local, state, regional and federal governmental agencies and all private persons and enterprises that have similar and related objectives and purposes, cooperate with those agencies, persons and enterprises and correlate department plans, programs and operations with those of the agencies, persons and enterprises.
3. Conduct research on its own initiative or at the request of the governor, the legislature or state or local agencies pertaining to any department objectives.
4. Provide information and advice on request of any local, state or federal agencies and private persons and business enterprises on matters within the scope of the department.
5. Consult with and make recommendations to the governor and the legislature on all matters concerning department objectives.
6. Promote and coordinate the management of air resources to ensure their protection, enhancement and balanced utilization consistent with the environmental policy of this state.
7. Promote and coordinate the protection and enhancement of the quality of water resources consistent with the environmental policy of this state.
8. Encourage industrial, commercial, residential and community development that maximizes environmental benefits and minimizes the effects of less desirable environmental conditions.
9. Ensure the preservation and enhancement of natural beauty and man-made scenic qualities.
10. Provide for the prevention and abatement of all water and air pollution including that related to particulates, gases, dust, vapors, noise, radiation, odor, nutrients and heated liquids in accordance with article 3 of this chapter and chapters 2 and 3 of this title.
11. Promote and recommend methods for the recovery, recycling and reuse or, if recycling is not possible, the disposal of solid wastes consistent with sound health, scenic and environmental quality policies. The department shall report annually on its revenues and expenditures relating to the solid and hazardous waste programs overseen or administered by the department.
12. Prevent pollution through the regulation of the storage, handling and transportation of solids, liquids and gases that may cause or contribute to pollution.
13. Promote the restoration and reclamation of degraded or despoiled areas and natural resources.
14. Participate in the state civil defense program and develop the necessary organization and facilities to meet wartime or other disasters.
15. Cooperate with the Arizona-Mexico commission in the governor's office and with researchers at universities in this state to collect data and conduct projects in the United States and Mexico on issues that are within the scope of the department's duties and that relate to quality of life, trade and economic development in this state in a manner that will help the Arizona-Mexico commission to assess and enhance the economic competitiveness of this state and of the Arizona-Mexico region.

16. Unless specifically authorized by the legislature, ensure that state laws, rules, standards, permits, variances and orders are adopted and construed to be consistent with and no more stringent than the corresponding federal law that addresses the same subject matter. This paragraph does not adversely affect standards adopted by an Indian tribe under federal law.

17. Provide administrative and staff support for the oil and gas conservation commission.

B. The department, through the director, shall:

1. Contract for the services of outside advisers, consultants and aides reasonably necessary or desirable to enable the department to adequately perform its duties.

2. Contract and incur obligations reasonably necessary or desirable within the general scope of department activities and operations to enable the department to adequately perform its duties.

3. Utilize any medium of communication, publication and exhibition when disseminating information, advertising and publicity in any field of its purposes, objectives or duties.

4. Adopt procedural rules that are necessary to implement the authority granted under this title, but that are not inconsistent with other provisions of this title.

5. Contract with other agencies, including laboratories, in furthering any department program.

6. Use monies, facilities or services to provide matching contributions under federal or other programs that further the objectives and programs of the department.

7. Accept gifts, grants, matching monies or direct payments from public or private agencies or private persons and enterprises for department services and publications and to conduct programs that are consistent with the general purposes and objectives of this chapter. Monies received pursuant to this paragraph shall be deposited in the department fund corresponding to the service, publication or program provided.

8. Provide for the examination of any premises if the director has reasonable cause to believe that a violation of any environmental law or rule exists or is being committed on the premises. The director shall give the owner or operator the opportunity for its representative to accompany the director on an examination of those premises. Within forty-five days after the date of the examination, the department shall provide to the owner or operator a copy of any report produced as a result of any examination of the premises.

9. Supervise sanitary engineering facilities and projects in this state, authority for which is vested in the department, and own or lease land on which sanitary engineering facilities are located, and operate the facilities, if the director determines that owning, leasing or operating is necessary for the public health, safety or welfare.

10. Adopt and enforce rules relating to approving design documents for constructing, improving and operating sanitary engineering and other facilities for disposing of solid, liquid or gaseous deleterious matter.

11. Define and prescribe reasonably necessary rules regarding the water supply, sewage disposal and garbage collection and disposal for subdivisions. The rules shall:

(a) Provide for minimum sanitary facilities to be installed in the subdivision and may require that water systems plan for future needs and be of adequate size and capacity to deliver specified minimum quantities of drinking water and to treat all sewage.

(b) Provide that the design documents showing or describing the water supply, sewage disposal and garbage collection facilities be submitted with a fee to the department for review and that no lots in any subdivision be offered for sale before compliance with the standards and rules has been demonstrated by approval of the design documents by the department.

12. Prescribe reasonably necessary measures to prevent pollution of water used in public or semipublic swimming pools and bathing places and to prevent deleterious conditions at those places. The rules shall prescribe minimum standards for the design of and for sanitary conditions at any public or semipublic swimming pool or bathing place and provide for abatement as public nuisances of premises and facilities that do not comply with the minimum standards. The rules shall be developed in cooperation with the director of the department of health services and shall be consistent with the rules adopted by the director of the department of health services pursuant to section 36-136, subsection I, paragraph 10.

13. Prescribe reasonable rules regarding sewage collection, treatment, disposal and reclamation systems to prevent the transmission of sewage borne or insect borne diseases. The rules shall:

(a) Prescribe minimum standards for the design of sewage collection systems and treatment, disposal and reclamation systems and for operating the systems.

(b) Provide for inspecting the premises, systems and installations and for abating as a public nuisance any collection system, process, treatment plant, disposal system or reclamation system that does not comply with the minimum standards.

(c) Require that design documents for all sewage collection systems, sewage collection system extensions, treatment plants, processes, devices, equipment, disposal systems, on-site wastewater treatment facilities and reclamation systems be submitted with a fee for review to the department and may require that the design documents anticipate and provide for future sewage treatment needs.

(d) Require that construction, reconstruction, installation or initiation of any sewage collection system, sewage collection system extension, treatment plant, process, device, equipment, disposal system, on-site wastewater treatment facility or reclamation system conform with applicable requirements.

14. Prescribe reasonably necessary rules regarding excreta storage, handling, treatment, transportation and disposal. The rules may:

(a) Prescribe minimum standards for human excreta storage, handling, treatment, transportation and disposal and shall provide for inspection of premises, processes and vehicles and for abating as public nuisances any premises, processes or vehicles that do not comply with the minimum standards.

(b) Provide that vehicles transporting human excreta from privies, septic tanks, cesspools and other treatment processes shall be licensed by the department subject to compliance with the rules. The department may require payment of a fee as a condition of licensure. The department may establish by rule a fee as a condition of licensure, including a maximum fee. As part of the rulemaking process, there must be public notice and comment and a review of the rule by the joint legislative budget committee. The department shall not increase that fee by rule without specific statutory authority for the increase. The fees shall be deposited, pursuant to sections 35-146 and 35-147, in the solid waste fee fund established by section 49-881.

15. Perform the responsibilities of implementing and maintaining a data automation management system to support the reporting requirements of title III of the superfund amendments and reauthorization act of 1986 (P.L. 99-499) and article 2 of this chapter.

16. Approve remediation levels pursuant to article 4 of this chapter.

17. Establish or revise fees by rule pursuant to the authority granted under title 44, chapter 9, article 8 and chapters 4 and 5 of this title for the department to adequately perform its duties. All fees shall be fairly assessed and impose the least burden and cost to the parties subject to the fees. In establishing or revising fees, the department shall base the fees on:

(a) The direct and indirect costs of the department's relevant duties, including employee salaries and benefits, professional and outside services, equipment, in-state travel and other necessary operational expenses directly

related to issuing licenses as defined in title 41, chapter 6 and enforcing the requirements of the applicable regulatory program.

(b) The availability of other funds for the duties performed.

(c) The impact of the fees on the parties subject to the fees.

(d) The fees charged for similar duties performed by the department, other agencies and the private sector.

18. Appoint a person with a background in oil and gas conservation to act on behalf of the oil and gas conservation commission and administer and enforce the applicable provisions of title 27, chapter 4 relating to the oil and gas conservation commission.

C. The department may:

1. Charge fees to cover the costs of all permits and inspections it performs to ensure compliance with rules adopted under section 49-203, except that state agencies are exempt from paying those fees that are not associated with the dredge and fill permit program established pursuant to chapter 2, article 3.2 of this title. For services provided under the dredge and fill permit program, a state agency shall pay either:

(a) The fees established by the department under the dredge and fill permit program.

(b) The reasonable cost of services provided by the department pursuant to an interagency service agreement.

2. Monies collected pursuant to this subsection shall be deposited, pursuant to sections 35-146 and 35-147, in the water quality fee fund established by section 49-210.

3. Contract with private consultants for the purposes of assisting the department in reviewing applications for licenses, permits or other authorizations to determine whether an applicant meets the criteria for issuance of the license, permit or other authorization. If the department contracts with a consultant under this paragraph, an applicant may request that the department expedite the application review by requesting that the department use the services of the consultant and by agreeing to pay the department the costs of the consultant's services. Notwithstanding any other law, monies paid by applicants for expedited reviews pursuant to this paragraph are appropriated to the department for use in paying consultants for services.

D. The director may:

1. If the director has reasonable cause to believe that a violation of any environmental law or rule exists or is being committed, inspect any person or property in transit through this state and any vehicle in which the person or property is being transported and detain or disinfect the person, property or vehicle as reasonably necessary to protect the environment if a violation exists.

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

49-404. State implementation plan

A. The director shall maintain a state implementation plan that provides for implementation, maintenance and enforcement of national ambient air quality standards and protection of visibility as required by the clean air act.

B. The director may adopt rules that describe procedures for adoption of revisions to the state implementation plan.

C. The state implementation plan and all revisions adopted before September 30, 1992 remain in effect according to their terms, except to the extent otherwise provided by the clean air act, inconsistent with any provision of the clean air act, or revised by the administrator. No control requirement in effect, or required to be adopted by an order, settlement agreement or plan in effect, before the enactment of the clean air act in any area which is a nonattainment or maintenance area for any air pollutant may be modified after enactment in any manner unless the modification insures equivalent or greater emission reductions of the air pollutant. The director shall evaluate and adopt revisions to the plan in conformity with federal regulations and guidelines promulgated by the administrator for those purposes until the rules required by subsection B are effective.

49-425. Rules; hearing

A. The director shall adopt such rules as the director determines are necessary and feasible to reduce the release into the atmosphere of air contaminants originating within the territorial limits of the state or any portion thereof and shall adopt, modify and amend reasonable standards for the quality of and emissions into the ambient air of the state for the prevention, control and abatement of air pollution. Additional standards shall be established for particulate matter emissions, sulfur dioxide emissions and other air contaminant emissions determined to be necessary and feasible for the prevention, control and abatement of air pollution. In fixing such ambient air quality standards, emission standards or standards of performance, the director shall give consideration but shall not be limited to the relevant factors prescribed by the clean air act.

B. No rule may be enacted or amended except after the director first holds a public hearing after thirty days' notice of such hearing. The proposed rule, or any proposed amendment of a rule, shall be made available to the public at the time of notice of such hearing.

C. The department shall enforce the rules adopted by the director.

D. All rules enacted pursuant to this section shall be made available to the public at a reasonable charge on request.

49-408. Air quality conformity; definition

A. Any revision to the state implementation plan adopted pursuant to 40 Code of Federal Regulations, part 51, subpart T shall be no more stringent than required under those regulations. No state agency, metropolitan planning organization or local transportation agency shall take action that is more stringent than required under federal law in performing any of the following functions:

1. Determining which projects require conformity determinations pursuant to 40 Code of Federal Regulations, part 93, any state implementation plan revisions adopted pursuant to 40 Code of Federal Regulations, part 51, subpart T, or the conformity requirements set forth in the federal implementation plan at 40 Code of Federal Regulations, part 52, subpart D.
2. Determining which projects constitute regionally significant projects within the meaning of any of the regulations identified in paragraph 1.
3. Making conformity determinations pursuant to any of the regulations identified in paragraph 1.

B. Notwithstanding any other provisions of this section, the director may adopt consultation procedures for the public or affected agencies which supplement the requirements of 40 Code of Federal Regulations, part 51, subpart T.

C. For purposes of this section "local transportation agency" means any city, town, county or other local or regional government or agency that receives federal funds designated under Title 23 United States Code or the federal transit act.

49-458. [Regional haze program; authority](#)

The department may participate in interstate regional haze programs that are established by the regional planning organization that is authorized for this region pursuant to 40 Code of Federal Regulations part 51, subpart P and the clean air act.

49-458.01. State implementation plan revision; regional haze; rules

A. The director shall submit to the administrator state implementation plan revisions to address regional haze visibility impairment in mandatory federal class I areas. The state implementation plan revisions submitted to the administrator shall address any of the following as necessary to submit an approvable plan:

1. The applicable time period.
2. A monitoring strategy for regional haze visibility impairment.
3. Calculations of baseline visibility conditions and natural visibility conditions.
4. Comprehensive emissions tracking strategies for clean air corridors.
5. Implementation of stationary source emissions reduction strategies.
6. Provisions addressing mobile source emissions.
7. Programs related to emissions from fire sources defined as wildland fire, including wildfire, prescribed natural fire, wildland fire use, prescribed fire and agricultural burning conducted and occurring on federal, state and private lands.
8. Provisions addressing the impact of dust emissions on visibility impairment.
9. Provisions relating to pollution prevention.
10. Best available retrofit technology requirements.
11. A report that assesses emissions control strategies for stationary source emissions of oxides of nitrogen and particulate matter and the degree of visibility improvement that would result from implemented strategies.
12. A long-term strategy that addresses regional haze visibility impairment.
13. Additional measures necessary to make reasonable progress toward remedying existing and preventing future regional haze in mandatory federal class I areas.
14. For the Arizona Grand Canyon visibility transport commission class I areas, a projection of the improvement in visibility conditions that are expected from the implementation of all measures set forth in the implementation plan.
15. For the eight other Arizona mandatory federal class I areas, provisions for the establishment of reasonable progress goals.
16. Periodic progress reports.

B. The department may establish intrastate market trading programs and participate in interstate market trading programs as necessary to submit an approvable plan under subsection A.

C. The director may adopt rules necessary for the revisions to the state implementation plan that address regional haze.

D. Except as provided in subsection E, the department may meet the requirements of subsection A by submitting plan revisions under 40 Code of Federal Regulations section 51.308 or section 51.309.

E. The department may submit a plan revision under 40 Code of Federal Regulations section 51.309 only if the revision contains a determination pursuant to 40 Code of Federal Regulations section 51.309 (d)(5)(ii) that

mobile source emissions from areas within the state do not contribute significantly to visibility impairment in any of the Grand Canyon visibility transport commission class I areas.

DEPARTMENT OF ENVIRONMENTAL QUALITY

Title 18, Chapter 5, Department of Environmental Quality - Environmental Reviews and Certification



GOVERNOR'S REGULATORY REVIEW COUNCIL

ATTORNEY MEMORANDUM - FIVE-YEAR REVIEW REPORT

MEETING DATE: November 2, 2021

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

FROM: Council Staff

DATE: October 15, 2021

SUBJECT: DEPARTMENT OF ENVIRONMENTAL QUALITY
Title 18, Chapter 5, Department of Environmental Quality - Environmental Reviews and Certification

Summary

This Five-Year Review Report (5YRR) from the Department of Environmental Quality (Department) relates to all rules in Title 18, Chapter 5, Articles 1-5 related to Environmental Reviews and Certifications. Specifically, the Articles under review relate to the following:

- Article 1: Classification of Water and Wastewater Facilities and Certification of Operators
- Article 2. Public and Semipublic Swimming Pools and Spas
- Article 3. Water Quality Management Planning
- Article 4. Subdivisions
- Article 5. Minimum Design Criteria

In the previous 5YRR for these rules, approved by the Council in 2016, the Department proposed to incorporate by reference a national standard for construction design for swimming pools and spas and, subsequently, repeal most of the sections in Article 2 by December 2020. The Department indicates it did not complete this proposed course of action. However, the Department indicates in 2017, it engaged in multiple discussions with the Arizona Department of Health Services (ADHS) and other regulatory entities including several counties, swimming pool

operators, and swimming pool construction companies in an extensive effort at consultation with stakeholders. During that engagement, the Department indicates there was a broad consensus among the stakeholders that, if there was to be an update to the rules, the best option was to mirror the standards and policies currently in place and enforced by Maricopa County. Currently, the Department states it is researching the level of review of swimming pools conducted by county and city departments.

Furthermore, the Department proposed to amend the following six (6) rules to address incorrect or inconsistent citations and references:

- **R18-5-401:** The definition of ‘condominium’, defined in rule by reference to a statutory definition, needs to be updated from A.R.S. § 33-551 *et seq.* to A.R.S. § 33-1201 *et seq.*
- **R18-5-406:** References to other rules are inconsistent. The proposed water system must comply with the minimum design standards that apply to public water systems that are prescribed in Title 18, Chapter 4, Article 5. However, ADEQ's Application for Sanitary Facilities for Subdivisions contains the correct reference to the Approval to Construct process of Title 18, Chapter 4, Article 5.
- **R18-5-407:** References to other rules are inconsistent. The proposed public sewerage system must comply with the sewage system rules that are now prescribed in Title 18, Chapter 9, Article 2 and 3.
- **R18-5-408:** The proposed individual sewage disposal system as described in subsections (B) through (E) must comply with the rules for on-site wastewater treatment facilities that are prescribed in Title 18, Chapter 9, Article 3.
- **R18-5-409:** References to other rules are inconsistent, as the rules in A.A.C. Title 18, Chapter 8, Article 5 were recodified to A.A.C. Title 18, Chapter 13, Article 3.
- **R18-5-410:** The reference to the Uniform Plumbing Code in R9-1-412(D) is inconsistent because this subsection does not exist.

The Department indicates that it did not complete the proposed course of action for these six rules to correct the incorrect or inconsistent citations and references.

Additionally, the Department proposed to amend the following two (2) rules to improve effectiveness and clarity:

- **R18-5-402:** The rule is effective in regards to the submission and review of pertinent subdivision plans, but could be more effective by including a more detailed description of the subdivision application and approval process.
- **R18-5-403:** The text could be further clarified by providing a more detailed description of the subdivision application and approval process.

The Department indicates that it did not complete this proposed course of action. However, the Department states, in preparation for the current report, it reviewed and reassessed these two rules and the 2016 proposal and has determined that the rule provides a sufficient amount of detail in the description of the subdivision application and approval process. Therefore, the

Department does not intend to move forward with the previously proposed amendments to R18-5-402 and 403.

Finally, the Department proposed to amend R18-5-502 to update the minimum design criteria, which incorporates by reference the 1979 Bulletin No. 10 as issued by the Arizona Department of Health Services. The Department indicated that since any future rulemaking would impact every public water system in the state, extensive stakeholder outreach would be required for this rulemaking. The Department stated it would need approximately three years to accomplish this rulemaking. The Department indicates it did not complete this proposed course of action. The Department states that, while the proposed course of action would be reasonable, extensive stakeholder outreach and a vast amount of technical research and writing would be required. The Department states, due to the rulemaking moratorium, higher priority strategic planning, and agency resource constraints, it has not engaged in this proposed rulemaking. The Department indicates it will update this rule contingent upon additional capacity through additional funding.

Proposed Action

The Department indicates its rules, as they exist now, generally provide the necessary information for the regulated community. As outlined above, for the rules in Article 2, the Department is currently researching the level of review of swimming pools conducted by county and city departments. Based on those findings, the Department states it may propose to expire some swimming pool rules and will submit such a request to the Council at that time. The Department states it anticipates that such a request would be submitted by June 2023.

For other rules the Department has proposed to amend, including those from the 2016 report, as outlined above, and those identified in the current report, the Department anticipates submitting a rulemaking to Council by June 2024.

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

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

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

The Department described probable economic impacts in qualitative and quantitative terms for all of the rules in previous economic impact statements (EIS) for Title 18 Chapter 5 Articles 1 through 5. For all five articles, the Department believes that the impact stated in the previous economic impact statements is accurate and the impact on the state's economy, small business, and consumers has not changed.

In regards to Article 2, the Department has received and processed 163 applications for public and semi-public swimming pools in the last five years. For Article 4, the Department has received and processed 270 applications for the Certificate of Approval for Sanitary Facilities.

Under Article 5, the Department has received and approved 855 applications for Approvals to Construct. In all cases, the Department believes the previous assessments of economic impact have been accurate and costs have been minor.

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 it believes the rules impose the least burden and costs to regulated persons, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objective. However, the Department has not provided any additional information related to that determination. Furthermore, the Department does not indicate that it has analyzed that the probable benefits of the rule outweigh within this state the probable costs of the rule.

A.R.S. § 41-1056(A) requires that the agency provide a "concise analysis" of each factor, including the cost-benefit/least burdensome determination. *See* A.R.S. § 41-1056(A)(9). Council staff followed up with the Board regarding the analysis performed by the agency to determine that the benefits of the current rules outweigh the costs, that the rules are the least burdensome necessary to achieve their underlying regulatory objectives, and whether any alternatives to the current rules were considered. Council staff would encourage the Council to inquire of the Board the analysis done to reach its cost-benefit/least burdensome determination.

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

The Department received extensive written criticism of the rules over the last five years. Summaries of these written criticisms and the Department's responses are found in Section 7 of the 5YRR on pages 7-42.

5. Has the agency analyzed the rules' clarity, conciseness, and understandability?

The Department states that its rules are generally clear, concise, and understandable except for the following rule:

- **R18-5-408:** This rule continues to be effective and function, but could benefit from clarification and an update to its references. Subsection A of the rule references an older version of Engineering Bulletin #12 which is no longer used and has been replaced with the current rules in Chapter 9. Furthermore, ADEQ understands the qualifications for a site investigation to fall under Chapter 9 R18-9-A310(H) and should be referenced in the Chapter 5 subdivision rules. The nitrogen loading requirements for subdivisions can be found on R18-9-A309(A)(8)(c) which is currently not referenced in the subdivision rules. Based on the calculations and how much nitrogen is loaded by the subdivision, the requirement of an alternative system to reduce nitrogen loading may be required. Additionally, a conventional or alternative system is not solely associated with nitrogen loading. Other subsurface and surface limiting conditions may apply that require the use of an alternative system or allow the use of a conventional system.

6. Has the agency analyzed the rules' consistency with other rules and statutes?

Except for those rules previously identified in the 5YRR approved by the Council in 2016, as outlined above, the Department does not identify any additional rules that are inconsistent with other rules or statutes.

7. Has the agency analyzed the rules' effectiveness in achieving its objectives?

The Department states that its rules are generally effective except for the following which could be more effective:

- **R18-5-208:** R18-5-208(C) incorrectly cites R18-5-242 for semi-public bathing places. The citation should be for R18-5-241.
- **R18-5-234:** The rule is effective, but would benefit from additional clarification. Some of the language in R18-5-234(D) would be clearer and more precise if altered.
“The addition of dry or liquid disinfectant directly into a public or semipublic swimming pool or spa for routine disinfection is prohibited. This prohibition does not prohibit the use of liquid or dry disinfectants for shock treatment of a swimming pool or spa.”
- change to -
“Chemicals added manually directly into the aquatic venue shall only be introduced in the absence of bathers.”
- **R18-5-407:** R18-5-811 was repealed from the AAC in September of 2000. R18-5-811's title was “Separation of water and sewer mains”. It was substantively incorporated into existing AAC rule R18-5-502(C).

8. Has the agency analyzed the current enforcement status of the rules?

The Department indicates that the rules are currently enforced as written.

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

The Department indicates that Articles 1 and 3 are not more stringent than corresponding federal law. The Department indicates there is no corresponding federal law for the rules in Articles 2, 4, and 5.

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

Not applicable. The Department indicates that all rules in Articles 1-5 were last amended prior to July 29, 2010.

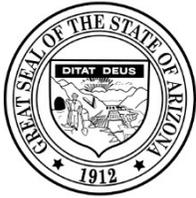
11. Conclusion

This 5YRR from the Department relates to all rules in Title 18, Chapter 5, Articles 1-5 related to Environmental Reviews and Certifications.

The Department indicates it did not complete much of its proposed course of action from the 2016 report. In the current report, the Department proposes to amend certain rules previously identified in the 2016 report, in addition to several other rules identified in the current report, by June 2024. In response to inquiries from Council staff, the Department indicates it is in the process of reviewing and updating its proposed course of action with regards to these rules and states a revised report is forthcoming. Council staff encourages the Council to discuss with the Department whether the proposed course of action time frame to amend some of these rules, particularly those that contain incorrect or inconsistent references, could be shorter, especially if these amendments could qualify for expedited rulemaking.

At this point, the incorrect or inconsistent references have been in the Administrative Code for over five years and will remain on the books for almost another three based on the Department's current proposed course of action. This has the potential to create confusion for the regulated community and increase the regulatory burdens of compliance. For example, this is particularly concerning for rule R18-5-410(A), which purports to reference the Uniform Plumbing Code as incorporated by reference in R9-1-412(D) when this subsection does not exist. As such, it is unclear whether this reference complies with the incorporation by reference requirements found in A.R.S. § 41-1028.

In response to Council staff's inquiries, the Department is also in the process of providing a more in-depth response regarding its cost/benefit and least burdensome analysis pursuant to A.R.S. § 41-1056(A)(9). Council staff also encourages the Council to inquire of the Department the information and analysis used to determine that the probable benefits of the rules outweigh within this state the probable costs of the rules, and the rules impose the least burden and costs to persons regulated by the rules, including paperwork and other compliance costs, necessary to achieve the underlying regulatory objectives, pursuant to A.R.S. § 41-1056(A)(9).



Douglas A. Ducey
Governor

ARIZONA DEPARTMENT
OF
ENVIRONMENTAL QUALITY



Misael Cabrera
Director

August 27, 2021

Nicole Sornsin, Chairperson
Governor's Regulatory Review Council
100 N. 15th Avenue, #305
Phoenix, AZ 85007

Re: Submittal of Five-Year Rule Review Report for A.A.C. Title 18, Chapter 5.

Dear Chair Sornsin:

I am pleased to submit to you, pursuant to A.R.S. § 41-1056 and A.A.C. R1-6-301, our agency's 5-Year Review Report for Title 18, Chapter 5 (DEQ - Environmental Reviews and Certification).

Pursuant to A.R.S. § 41-1056(A), I certify that ADEQ is in compliance with A.R.S. § 41-1091 requirements for filing of notices of substantive policy statements and annual publication of a substantive policy statement directory.

Please contact the following ADEQ employee if you have any questions:

Jon Rezabek
Water Quality Division
602-771-8219
rezabek.jon@azdeq.gov

Sincerely,

Misael Cabrera, P.E.
Director

Enclosure

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Five-Year Review Report
Title 18. Environmental Quality
Chapter 5. Department of Environmental Quality
Environmental Reviews and Certification
Article 1. Classification of Water and Wastewater Facilities and Certification of Operators
Article 2. Public and Semipublic Swimming Pools and Spas
Article 3. Water Quality Management Planning
Article 4. Subdivisions
Article 5. Minimum Design Criteria
August 27, 2021

1. Authorization of the rule by existing statutes:

General Statutory Authority: A.R.S. §§ 49-104(B)(10), (B)(11), (B)(12), and (B)(13)

Specific Statutory Authority: A.R.S. §§ 49-203(A)(3), 49-352, 49-353(A)(2), 49-353.01(A)(1), and 49-361

2. The objective of each rule:

Rule	Objective
R18-5-101	The definition section defines important terms used in Article 1, so that the rules are understandable to the general public.
R18-5-102	The rule clarifies the scope and applicability of the operator certification rules by prescribing various exemptions.
R18-5-103	The rule establishes an operator certification advisory committee to make recommendations to ADEQ and to provide ADEQ with technical advice and assistance on the operator certification program as may be requested. The rule prescribes the make-up of the certification committee, establishes terms of office and term limits, and prescribes procedures for the selection of a chairman, determining quorums, filling vacancies, and reappointing committee members.
R18-5-104	This rule establishes general requirements for both the facility owner and the certified operator of a facility.
R18-5-105	The rule prescribes three eligibility requirements for ADEQ operator certification. An applicant for operator certification must: 1) submit an application for operator certification, 2) comply with education and experience requirements, and 3) pass a written examination.
R18-5-106	The rule establishes written examination requirements for operator certification.
R18-5-107	The rule establishes a three-year term for the certificate. To renew, the operator must demonstrate completion of sufficient professional development training at the time of renewal. Alternatively, an operator may renew a certificate by taking and passing an examination for the applicable class and grade.
R18-5-108	The rule provides for the lapsing of an operator certificate that is not renewed in a timely way. The rule provides for a 90-day grace period during which a lapsed

	operator certificate may be reinstated. If a lapsed operator certificate is not reinstated within the 90-day grace period, the operator must reapply for operator certification and comply with all of the requirements that apply to new applicants for operator certification.
R18-5-109	This rule sets forth criteria for denial, suspension, and revocation of certificates, and depending on the severity of the infraction, allows ADEQ to revoke or suspend licenses or to place operators on probation.
R18-5-110	The rule prescribes procedures for granting reciprocity to an operator who holds a certificate issued by an operator certification program in another jurisdiction (a State, territory, or possession of the United States.) The rule requires an applicant to have passed a written examination that is approved by ADEQ and meet education and experience requirements prescribed in the rule for the operator certificate sought.
R18-5-112	The rule prescribes minimum education and experience requirements for eligibility for operator certification.
R18-5-113	The rule establishes the criteria for the classification of drinking water and wastewater facilities.
R18-5-114	The rule establishes the criteria for the classification of wastewater treatment plants and wastewater collection systems; the rule establishes classification grades by the type of treatment provided, the population served, and the degree of hazard to the public health.
R18-5-115	The rule establishes the point system to classify water treatment plants and distribution systems, based on plant and system characteristics.
R18-5-116	The rule establishes the criteria for the grading and regrading of drinking water and wastewater facilities.
R18-5-201	The definition section defines important terms used in Article 2, so that the rules are understandable to the general public.
R18-5-202	This rule defines the entities and circumstances the Article 2 rules apply to.
R18-5-203	The rule establishes the process and requirements that a person must comply with to obtain design approval of a new public or semipublic swimming pool or spa, or modifications thereto.
R18-5-204	The rule establishes the process and requirements for a person to receive ADEQ's approval of construction for a new public or semipublic swimming pool or spa, or modifications thereto.
R18-5-205	The rule prohibits that a fill-and-draw swimming pool or spa or a private residential spa be used as a public or semipublic swimming pools or spas.
R18-5-206	The rule ensures that the water used to fill public or semipublic swimming pools or spas is of a quality that will adequately protect public health.
R18-5-207	The rule ensures that public or semipublic swimming pools or spas are constructed of materials that will not pose a danger to public health or the environment.
R18-5-208	The rule ensures that public or semipublic swimming pools or spas are not overcrowded and that there are adequate bathing and sanitary facilities.
R18-5-209	The rule ensures that public or semipublic swimming pools or spas are shaped in a manner that will minimize hazards to users and provide adequate circulation of the water.

R18-5-210	The rule ensures that the public or semipublic swimming pools or spas are deep enough and that their walls are connected to the floor of the pool or spa in a manner that will minimize hazards to users.
R18-5-211	The rule ensures that the distance between the pool deck and the water surface is of a distance that ensures the safety of users of public or semipublic swimming pools or spas.
R18-5-212	The rule ensures that the transition or slope of the floor from the shallow to the deep end of public or semipublic swimming pools is gradual enough to ensure the safety of persons using the pools.
R18-5-213	The rule ensures that public or semipublic swimming pools have an adequate number of entries and exits, whether ladders, steps, or other means, to ensure the safety of persons using the pools.
R18-5-214	The rule ensures that the steps in public or semipublic swimming pools or spas have a handrail and are otherwise constructed in a manner that ensures the safety of persons using the pools.
R18-5-215	The rule ensures that any ladders in public or semipublic swimming pools or spas are constructed in a manner that ensures the safety of persons using the pools.
R18-5-216	The rule ensures that public or semipublic swimming pools or spas that use recessed treads in place of ladders are constructed in a manner that ensures the safety of persons using the pools.
R18-5-217	The rule ensures that decks, ramps, and similar surfaces used around public or semipublic swimming pools or spas are constructed of a slip-resistant material, and are otherwise constructed in a manner that ensures the safety of persons using the pools.
R18-5-218	The rule ensures that public or semipublic swimming pools or spas and adjacent areas are lighted when in use, in order to ensure the safety of persons using the pools.
R18-5-219	The rule ensures that public or semipublic swimming pools or spas have a shallow end that allows most persons to stand, yet is deep enough to allow persons to dive into pools that have racing lanes.
R18-5-220	The rule ensures that the depth of public or semipublic swimming pools is clearly marked.
R18-5-221	The rule ensures that the dimensions, diving equipment, and steps or ladders used in public or semipublic swimming pools are constructed in a manner that ensures the safety of persons using the pool.
R18-5-222	The rule ensures that public or semipublic swimming pools that are not of a sufficient depth to permit persons to safely dive into the pool post warnings against diving.
R18-5-223	The rule ensures that public or semipublic swimming pools or spas have water circulation systems that provide complete circulation of water through all parts of the pool or spa, and can maintain water chemistry and clarity requirements.
R18-5-224	The rule ensures that the water circulation piping and fittings in public or semipublic swimming pools or spas meet established specifications, are adequately tested, and do not exceed established water velocity limits for discharge of suction piping.
R18-5-225	The rule ensures that public or semipublic swimming pools or spas have pumps of sufficient size to ensure proper filtering and water circulation.
R18-5-226	The rule ensures that drains and suction outlets in public or semipublic swimming pools or spas are configured so as not to pose a danger to persons via entrapment by the suction.

R18-5-227	The rule ensures proper design, location, and construction of filters, to allow for inspection, cleaning, replacement, or repair of filter elements or media.
R18-5-228	The rule ensures that the design, location, and construction of filters allow for inspection, cleaning, replacement, or repair of filter elements or media.
R18-5-229	The rule ensures that public or semipublic swimming pools or spas have proper pressure gauges installed in accessible places.
R18-5-230	The rule ensures that public swimming pools have installed accurate flow meters to ensure that the rate of backwash through pool filters is within manufacturers' specifications.
R18-5-231	The rule ensures that public or semipublic swimming pools or spas have strainers before pumps in water circulation systems to prevent material from reaching pumps and filters.
R18-5-232	The rule ensures that proper water level is maintained in public or semipublic swimming pools or spas.
R18-5-233	The rule ensures that public or semipublic swimming pools install vacuum cleaning systems that do not create a hazard or interfere with use of the pool.
R18-5-234	The rule ensures that public or semipublic swimming pools and spas have automatic disinfection equipment that maintains an adequate level of disinfectant residual, and that only authorized disinfectants are used.
R18-5-235	The rule ensures that there are no cross-connections between public water systems and water circulations systems in public or semipublic swimming pools or spas.
R18-5-236	The rule ensures proper disposal of all wastewater, and that there is no cross-connection between the sewer system and the water circulation system of a public or semipublic swimming pool.
R18-5-237	The rule ensures that public swimming pools install an adequate number of elevated lifeguard chairs in appropriate locations.
R18-5-238	The rule ensures that public or semipublic swimming pools have lifesaving and safety equipment located in a conspicuous location and properly maintained.
R18-5-239	The rule ensures that public swimming pools have a rope and float line separating the shallow and deep ends of the pool.
R18-5-240	The rule ensures that public or semipublic swimming pools, spas, decks, and operational equipment are enclosed by a barrier that meets specified criteria to prevent injuries and drownings.
R18-5-241	The rule establishes minimum criteria for dressing rooms and bathrooms for public swimming pools.
R18-5-242	The rule establishes minimum criteria for bathrooms for semipublic swimming pools.
R18-5-243	The rule ensures that at least one drinking water fountain is available at all public swimming pools or spas.
R18-5-244	The rule ensures that wading pools are designed, constructed, and operated in a manner that ensures safe and sanitary conditions.
R18-5-245	The rule establishes safety criteria for spa jet timers.

R18-5-246	The rule ensures that air blowers and air induction systems used at public or semipublic spas meet the criteria set out in rule.
R18-5-247	The rule ensures that water in public or semipublic spas is not hot enough to scald persons.
R18-5-248	The rule ensures that designs for public or semipublic special use pools are reviewed by ADEQ to ensure proper design, construction, and operation.
R18-5-249	The rule allows variances from the requirements of Article 2 if an applicant can establish that the variance will not result in increased risk to health or safety.
R18-5-250	The rule allows inspectors to verify compliance with the requirements of the rules in Article 2.
R18-5-251	The rule sets out enforcement procedures that ADEQ follows when an inspection reveals a violation of the requirements of Article 2, and allows ADEQ to order the closure of a public or semipublic pool or spa when warranted.
Illustration A	The illustration and accompanying table enhance the textual explanation of diving well construction standards contained in R18-5-221 and R18-5-222.
Illustration B	The illustration explains in spatial form the requirements of R18-5-217, which references the illustration.
R18-5-301	The rule defines the terms that are used in the Water Quality Management Planning rules.
R18-5-302	The rule ensures that Certified Areawide Water Quality Management Plans, and plan amendments, meet the criteria in the rules prior to approval by the ADEQ Director.
R18-5-303	The rule contains the criteria by which ADEQ determines whether a proposed sewage treatment facility, or expansion of to an existing facility, is consistent with the applicable 208 Plan.
R18-5-401	The rule defines the terms that are used in the subdivision rules.
R18-5-402	The rule requires the submittal of plans and specifications for the water supply and sewage disposal systems, and the method of garbage disposal to be provided in the subdivision. The rule prohibits the sale of lots in a subdivision until the plans and specifications are submitted to and approved by ADEQ.
R18-5-403	The rule requires the submittal of a complete application for a Certificate of Approval of Sanitary Facilities in quadruplicate.
R18-5-404	The rule prescribes minimum sizes for lots in subdivisions to safely accommodate on-site sewage disposal systems, comply with minimum setback requirements, and to accommodate reasonable future expansion of the drinking water and sewage systems.
R18-5-405	The rule clarifies that it is the subdivider's responsibility to provide and install drinking water and wastewater infrastructure to each lot in a subdivision before occupancy in accordance with ADEQ-approved design plans and specifications when subdivision plans include a public water system or public sewage system.
R18-5-406	The rule requires ADEQ approval of the potable water system that will serve a subdivision, and specifies the submittal requirements and minimum standards necessary to obtain approval.
R18-5-407	The rule requires ADEQ approval of the sewer system that will serve a subdivision and specifies the submittal requirements and minimum standards necessary to obtain approval.

R18-5-408	The rule establishes the criteria for approval of subdivisions that use individual sewage disposal systems for wastewater treatment and disposal (i.e., conventional septic tank/leach field systems) and specifies the submittal requirements and minimum standards necessary to obtain approval. The rule also prohibits individual sewage disposal systems where they may create an unsanitary condition or a public health nuisance, or the use of cesspools.
R18-5-409	The rule ensures that adequate garbage collection and disposal services are provided for a subdivision, and specifies the submittal requirements necessary to obtain approval.
R18-5-410	The rule prescribes approval criteria for condominiums. Condominiums are treated like subdivisions by the Department of Real Estate, and ADEQ approval of the sanitary facilities for a condominium project is required.
R18-5-411	The rule provides authority for ADEQ to bring an environmental nuisance action if a subdivider offers a lot for sale, lease, or rent and does not comply with ADEQ's Sanitary Facilities for Subdivisions rules.
R18-5-501	The rule requires that new public water systems and extensions to existing public water systems be in a geographic location that would avoid significant risk from natural disasters that could compromise the safety of the drinking water and public health.
R18-5-502	The rule sets forth minimum design criteria requirements for public water systems, requiring that they be designed using good engineering practices and standards that will result in a system that operates properly and reliably.
R18-5-503	The rule ensures that a water system that serves a residential population or a school has adequate water storage to meet peak demand.
R18-5-504	The rule ensures that public water systems are designed and built using components that will not contaminate drinking water with lead.
R18-5-505	The rule establishes the process and requirements for a person to submit documentation to ADEQ for design review and approval to construct.
R18-5-506	The rule ensures that any changes to the design plans for public water systems are reviewed and approved by ADEQ prior to being built.
R18-5-507	The rule ensures that public water systems are actually constructed as designed and approved at the "approval to construct" stage described in R18-5-505.
R18-5-508	The rule ensures that an Arizona registered professional engineer approves all original design plans and any deviations from the original plans.
R18-5-509	The rule ensures that prior to making modifications to the processes utilized by public water systems to treat drinking water, ADEQ reviews and approves the changes to the treatment process.

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

The rules are generally effective in achieving their objectives except as noted below.

Rule	Objective
R18-5-208	R18-5-208(C) incorrectly cites R18-5-242 for semipublic bathing places. The citation should be for R18-5-241. ADEQ will update this rule contingent upon additional capacity through additional funding.
R18-5-234	The rule is effective, but would benefit from additional clarification. Some of the language in R18-5-234(D) would be clearer and more precise if altered.

	<p><i>“The addition of dry or liquid disinfectant directly into a public or semipublic swimming pool or spa for routine disinfection is prohibited. This prohibition does not prohibit the use of liquid or dry disinfectants for shock treatment of a swimming pool or spa.”</i></p> <p>- change to -</p> <p><i>“Chemicals added manually directly into the aquatic venue shall only be introduced in the absence of bathers.”</i></p> <p>Despite the potential for more exacting language, the rule remains functional in achieving its objective as is. ADEQ will update this rule contingent upon additional capacity through additional funding.</p>
R18-5-407	R18-5-811 was repealed from the AAC in September of 2000. R18-5-811’s title was “Separation of water and sewer mains”. It was substantively incorporated into existing AAC rule R18-5-502(C). ADEQ will update this rule contingent upon additional capacity through additional funding.

4. **Are the rules consistent with other rules and statutes?** Yes No

5. **Are the rules enforced as written?** Yes No

6. **Are the rules clear, concise, and understandable?** Yes No

Rule	Explanation
R18-5-408	This rule continues to be effective and function, but could benefit from clarification and an update to its references. Subsection A of the rule references an older version of Engineering Bulletin #12 which is no longer used and has been replaced with the current rules in Chapter 9. Furthermore, ADEQ understands the qualifications for a site investigation to fall under Chapter 9 R18-9-A310(H) and should be referenced in the Chapter 5 subdivision rules. The nitrogen loading requirements for subdivisions can be found on R18-9-A309(A)(8)(c) which is currently not referenced in the subdivision rules. Based on the calculations and how much nitrogen is loaded by the subdivision, the requirement of an alternative system to reduce nitrogen loading may be required. Additionally, a conventional or alternative system is not solely associated with nitrogen loading. Other subsurface and surface limiting conditions may apply that require the use of an alternative system or allow the use of a conventional system. ADEQ will take this suggestion under advisement during any potential future rulemakings addressing 18 A.A.C. 5, Article 4. ADEQ will update this rule contingent upon additional capacity through additional funding.

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

Rule	Explanation
General	<u>Criticism 1</u> : Too much information for the layman to understand. A lawyer would need to read it to fully comprehend it. 28 pages of legal jargon. I'm not sure of the objective. Again, it needs a layer to understand it.

	<p><u>Response 1:</u> ADEQ appreciates the comment. ADEQ believes the rules are clear, concise and understandable. The rules must be detailed in order to properly convey complicated information and protect human health and the environment.</p>
<p>Article 1</p>	<p><u>Criticism 1:</u> I realize that the code needs to be very structured but it might be nice to add some layman's verbiage to help with understanding the rule. I would assume that a typical operator is only reading this when they are studying for a certification test.</p> <p><u>Response 1:</u> ADEQ appreciates the comment. ADEQ believes the rules are clear, concise and understandable. The rules must be detailed in order to properly convey complicated information and protect human health and the environment.</p> <p><u>Criticism 2:</u> Would like clarification of collection system with lift stations, Thank you.</p> <p><u>Response 2:</u> ADEQ appreciates the comment. Please see R18-9-B301 & E301 for clarification of collection systems with lift stations. Also, please call ADEQ - Groundwater staff for further clarification at 602-771-4999.</p> <p><u>Criticism 3:</u> Operator certification at the highest levels (class/grade, that is 4/4) ought to be automatic for Professional Engineers specializing in environmental engineering or sanitary engineering. PEs ought not have to pass another examination, get a certificate, or meet any other requirements, including PDHs beyond those required for the maintenance of the PE.</p> <p><u>Response 3:</u> ADEQ appreciates the comment. These are different areas of knowledge. Passing a PE specializing in environmental engineering does not guarantee that the engineer has knowledge in the operation of a wastewater or water treatment plant, sewer collection system, or water distribution system. At the moment, Arizona does not require continuing education (or PDHs) to maintain the PE. An operator certification has continuing education requirements in order to maintain certification. A level 4/4 is the highest certification that can be attained and comes with a high level of responsibility relevant to a wastewater or water treatment plant, sewer collection system, or water distribution system. This is based on knowledge and experience of an operator which is not guaranteed by the passing of the PE exam specializing in environmental engineering. While the PE has some experience requirements associated with qualifying to sit for the exam, it does not guarantee that the engineer will have the necessary work experience to qualify as a Grade 4 operator.</p>
<p>R18-5-101</p>	<p><u>Criticism 1:</u> R18-5-101, in reference to Onsite Operator, Facility, Distribution and Collection. It seems according to R18-5-104, an onsite operator must visit each component (pump, valve, fire hydrant, manhole) in the system each day. This to me seems like an undue burden on the utility. I believe the intent is to have an onsite operator visit a facility that changes the characteristics of the water on a daily basis, not checking the pump, the tank or other systems. I think with a clarification of the description, the intent of the rule can be achieved.</p> <p><u>Response 1:</u> ADEQ appreciates the comment and will take the comment under advisement during any potential future rulemakings addressing the rules in R18-5,</p>

	<p>Article 5. ADEQ believes its current rules adequately protect human health and the environment.</p>
<p>R18-5-102</p>	<p><u>Criticism 1:</u> Are the permit holders for non-residential properties (R18-5-102B) or permit holders for facilities that serve less than a 2,500 resident population (R18-5-102A) exempt from operation and maintenance responsibilities of their facilities? If so, why? If they do not require a certified operator, then why? These are sanitary facilities like any others and have the potential to harm the public and environment, so why are there any seemingly arbitrary and capricious exemptions? Many permit holders of such facilities are hiring unqualified personnel or are neglecting the facilities altogether, using this "exemption" area of the rule as justification for neglect or unsafe operation.</p> <p>The sections cited above impose no burden and achieve no objective whatsoever. Also a lack of enforcement has bred a culture of apathy and neglect among permit holders.</p> <p>The exemptions in Sections R18-5-102(A) & (B) need to be removed from the rule and all APP GP Type 4.01 facilities need to be monitored regularly by the Department for enforcement of proper and ongoing operations.</p> <p><u>Response 1:</u> ADEQ appreciates the comments. ADEQ disagrees that the referenced sections need to be removed. For example, without the exemption in A.A.C. R18-5-102(B)(2) - a certified operator would be required for a septic tank serving a single-family residence if these comments were to be implemented.</p> <p>With respect to R18-5-102(3) - the exemption covers a collection system that serves 2,500 or fewer persons and discharges into a facility that is operated by a certified operator. Currently, the 4.01 GP allows an exemption from the rule if there is a sewer line that conveys sewage from a single building drain directly to an interceptor, collector sewer, lateral, or manhole regardless of daily design flow. Small sewer lines are typically handled by the Uniform Plumbing Code as the main problem that is being dealt with is clogged sewer lines (such disposal of products into drains and so on). For example, an apartment complex can have multiple buildings connected by a gravity flow sewer collection system that a commercial plumber can handle with respect to plugging issues. However, if the sewage collection system has a lift station, it may require more knowledge from the plumber including pump replacement and maintenance, electrical components, control panels, the floats, and require other abilities to handle complex issues associated with a lift station.</p> <p>The 1.11 General Permit (under R18-9-B301(K)) allows the operation of a sewage collection system that serves upstream from the point where the daily design flow is 3,000 gpd to the building drains, or a single building drain directly to an interceptor, collector sewer, lateral, or manhole regardless of daily design flow. This would normally fall under the Uniform Plumbing Code provided they meet the requirement in rule (1-8). R18-9-B301(K)(4) states that the system does not include a manhole force main, or lift station serving more than one dwelling. If this is the case then it goes back to the requirements of the 4.01 permit.</p> <p>This criticism merits further discussion during any potential future rulemakings for collection systems that have lift stations serving 2,500 or fewer persons and whether operators would be required.</p>

	<p><u>Criticism 2:</u> Lift stations are the weakest link in the collection system. There are thousands of large lift stations under this exemption that are not maintained by a certified operator. Most sites are poorly maintained if at all and have numerous SSO's causing environmental and safety issues for the area. I think a collection system that has a lift station should not be exempt from the rule. SSO's from non-regulated entities are severely underreported.</p> <p><u>Response 2:</u> While ADEQ believes its current rules adequately protect human health and the environment, ADEQ agrees that increased clarity would benefit those relying on the rules. ADEQ will take the comment under advisement during any potential future rulemakings addressing the rules in 18 A.A.C. 5, Article 5.</p>
<p>R18-5-104</p>	<p><u>Criticism 1(a):</u> If a grade 1 collection system is exempt from the operator certification rule, who then, is responsible for the operation and maintenance of the system? At present, it is difficult to protect human health and the environment if no one is stated in their R18-9-100 et seq., or in R18-5-100 et seq. Currently the operators of the treatment plant say that they are not responsible for a grade 1 collection system. I have found it difficult to enforce over my 33 years with the agency and have to use a lot of sugar to get the private systems, MHPs, and such to take care of their collection systems. This rule should be written more clearly as to who the actual expert of operations should be. The RPs do not have said expertise.</p> <p><u>Response 1(a):</u> ADEQ appreciates the comment. Currently, R18-5-114(1)(c) classifies the facility as a Grade 1 facility if a collection system serves 2,500 or fewer persons. R18-5-104(A)(1) states that a facility has an operator in direct responsible charge who is certified for the class of the facility and at or above the grade of the facility. R18-5-104(A)(5) states that in absence of the operator in direct responsible charge, the operator in charge of the facility is certified for the applicable class of facility and at a grade no lower than one grade below the grade of the facility. However, R18-5-102(B)(3) exempts a collection system that serves 2,500 or fewer persons and discharges into a facility that is operated by a certified operator. Then R18-5-104(F)(7)(c) - states that a remote operator inspects a facility as often as necessary to ensure proper operation and maintenance but in no case less than twice a month for a collection system that serves fewer than 2,500 people. This conflict in rules requires further discussion. ADEQ will take this suggestion under advisement during any potential future rulemakings addressing 18 A.A.C. 5, Article 4. ADEQ will update this rule contingent upon additional capacity through additional funding.</p> <p><u>Criticism 1(b):</u> I would also like to comment on R18-5-104.F. Remote operators should not only be required to keep a log at each of the systems they operate, but also with them as to prove that they are visiting their system. Joe F. has some 150 systems on his certification and about half of those are grade 2 systems. How can anyone visit more than 8 grade 2 systems in a 10 hour day, (1/2 hr travel, 1/2 hr onsite, next system) [total of 54 grade 2 systems in a 7 day week] and still meet F.7.d let alone the rest of F.7?</p> <p><u>Response 1(b):</u> ADEQ appreciates the comment. The suggestion for them to keep a log is a good idea and provides proof of the systems they have inspected/visited. It should also list the issues observed and the actions taken to address those issues. The log book can be required for each facility - very similar to the hazardous waste requirements of site inspections.</p>

	<p><u>Criticism 1(c):</u> R18-5-104(E): How long does the operator have to be onsite to qualify as the onsite operator. Once a day? Once a week? How many hours? Also, does each shaft require an operator of the same grade as the facility or can a shaft have an onsite operator one grade below the facility grade?</p> <p><u>Response 1(c):</u> ADEQ appreciates the comment. Based on R18-5-104(E) - A facility shall ensure that a Grade 3 or Grade 4 facility has an onsite operator - This is interpreted as an operator being there all the time. Grade 3 and 4 facilities consist of larger flows serving a larger population, more complex technologies. However, based on R18-5-104(F) - An operator holding certification in a particular class and grade may operate one or more Grade 1 or Grade 2 facilities as a remote operator provided the requirements in rule are met. This is interpreted as an operator not being on the site all the time but has the ability to manage and visit multiple sites. A Grade 3 and Grade 4 facilities require more responsibility and the oversight of an operator. However, a Grade 1 and 2 facilities require less oversight (small facilities, simpler technology, less flow). The rule does not specify how many days, or how much time. ADEQ is uncertain what ‘shaft’ means in the comment.</p>
<p>R18-5-112</p>	<p><u>Criticism 1:</u> Education credit should include having a MBA or Master Degree in a related field.</p> <p><u>Response 1:</u> ADEQ appreciates the comment. Currently, education credits are based on holding a Bachelor's degree in a qualifying discipline.</p>
<p>R18-5-114</p>	<p><u>Criticism 1:</u> While the rules themselves are clear, it may be beneficial to list R18-5-114. Grades of Wastewater Treatment Plants and Collection Systems earlier in the article, as the grades are referenced throughout the article before they are defined.</p> <p><u>Response 1:</u> ADEQ appreciates the comment. ADEQ believes rearranging R18-5-113 through R18-5-116 to be places at the beginning of the chapter might be beneficial to some users. However, ADEQ believes its current rules adequately protect human health and the environment. ADEQ will take the comment under advisement during any potential future rulemakings addressing the rules in 18 A.A.C. 5, Article 1.</p>
<p>R18-5-201</p>	<p><u>Criticism 1:</u> The definition of "Bather Load" is not defined in R18-5-201. Certified Pool Operator Trainings will teach that this can include people on the deck or at tables if they are in swimwear. This can lead to confusion with operators and should be defined.</p> <p><u>Response 1:</u> ADEQ appreciates the comment. The rules define “maximum bathing load” in R18-5-201. “Maximum Bathing Load” is the design capacity or the maximum number of users that a public or semipublic swimming pool or spa is designed to hold.</p> <p><u>Criticism 2:</u> Please define what a “political subdivision” is -- it apparently is not a pool operated by a home owner association as that appears to be defined as semipublic.</p> <p><u>Response 2:</u> ADEQ appreciates the comment. “Political subdivision” is referenced under the R18-5-201 definition of a “Public swimming pool”:</p> <p><i>“A swimming pool that is open to the public with or without fee, including a swimming pool that is operated by a county, municipality, political subdivision, school district, university, college, or a commercial establishment whose primary business is the operation of a swimming pool.”</i></p>

	A.R.S. 38-701(4) defines a “political subdivision” by including “counties, incorporated cities or towns and school districts in this state, and any other political subdivision as defined in article XIII, section 7, Constitution of Arizona.”
R18-5-208	<p><u>Criticism 1:</u> Subsection (C) - For the maximum bathing load for a public swimming pool cites section R18-5-242 for semipublic bathing places when it should cite section R18-5-241 for public bathing places.</p> <p><u>Response 1:</u> ADEQ appreciates the comment. ADEQ agrees that the rule should reference R18-5-242 and not R18-5-241. DEQ will take the comment under advisement during any potential future rulemakings addressing the rules in 18 A.A.C. 5, Article 2.</p>
R18-5-216	<p><u>Criticism 1:</u> Add a subsection (G) stating the following, “G. Recessed treads with handrails may be substituted for steps in Cold Therapy Spas.”</p> <p><u>Response 1:</u> ADEQ appreciates the comment. ADEQ believes the rule to be sufficient as is, but will take this suggestion under advisement during any potential future rulemakings addressing 18 A.A.C. 5, Article 2. The Department will also gather further industry knowledge to verify the necessity of this recommendation.</p>
R18-5-217	<p><u>Criticism 1:</u> Change the final phrase in Subsection (D) to “...and around at least 50% of the perimeter of a public or semipublic spa at the coping level.”</p> <p><u>Response 1:</u> ADEQ appreciates the comment. ADEQ believes the rule to be sufficient as is, but will take this suggestion under advisement during any potential future rulemakings addressing 18 A.A.C. 5, Article 2. The Department will also gather further industry knowledge to verify the necessity of this recommendation.</p>
R18-5-219	<p><u>Criticism 1:</u> Replace third sentence of Subsection (A) with “[i]n public of semi-public swimming pools, where racing lanes terminate, the minimum depth shall be based on a swimming federation, U.S. Swimming, FINA or NCAA standard.”</p> <p><u>Response 1:</u> ADEQ appreciates the comment. ADEQ believes the rule to be sufficient as is, but will take this suggestion under advisement during any potential future rulemakings addressing 18 A.A.C. 5, Article 2. The Department will also gather further industry knowledge to verify the necessity of this recommendation.</p> <p><u>Criticism 2:</u> Change Subsection (C) to “[t]he maximum water depth in a public, semipublic or hot therapy spa shall be 42 inches, measured from the water level. Cold therapy spas shall have a maximum water depth of 48.”</p> <p><u>Response 2:</u> ADEQ appreciates the comment. ADEQ believes the rule to be sufficient as is, but will take this suggestion under advisement during any potential future rulemakings addressing 18 A.A.C. 5, Article 2. The Department will also gather further industry knowledge to verify the necessity of this recommendation.</p>
R18-5-222	<p><u>Criticism 1:</u> It would be helpful to have general signage requirements for semi-public pools and spas in addition to the "no diving" warning signs in R18-5-222.</p> <p><u>Response 1:</u> ADEQ appreciates the comment. ADEQ will take the comment under advisement during any potential future rulemakings addressing the rules in 18 A.A.C. 5, Article 2.</p>

<p>R18-5-223</p>	<p><u>Criticism 1</u>: Change the third sentence of Subsection (B) to “[t]he water circulation system for a wading pool or spray pad shall have a turnover rate of at least once every hour.”</p> <p><u>Response 1</u>: ADEQ appreciates the comment. ADEQ believes the rule to be sufficient as is, but will take this suggestion under advisement during any potential future rulemakings addressing 18 A.A.C. 5, Article 2. The Department will also gather further industry knowledge to verify the necessity of this recommendation.</p> <p><u>Criticism 1</u>: Add a Subsection (H), stating the following, “[t]he sanitized water source for spray pads shall have a minimum volume of 4,000 gallons. Pools over 20,000 gallons may use sanitized water as long as a second sanitation device is approved by NSF 50 and is installed in the pool circulation system, providing a range of disinfection at the spray nozzles in concurrence with the requirements of R18-5-234(A)(1) and (A)(2).”</p> <p><u>Response 1</u>: ADEQ appreciates the comment. ADEQ believes the rule to be sufficient as is, but will take this suggestion under advisement during any potential future rulemakings addressing 18 A.A.C. 5, Article 2. The Department will also gather further industry knowledge to verify the necessity of this recommendation.</p>
<p>R18-5-226</p>	<p><u>Criticism 1</u>: Replace Subsection (B) with “[a]ll drain covers shall meet the requirements of 15 U.S.C. 8003(C)(1).”</p> <p><u>Response 1</u>: See Response 2 below.</p> <p><u>Criticism 2</u>: Section R18-5-226. Drains and Suction Outlets - does not include a reference to the Virginia Graeme Baker anti-entrapment drain cover requirements. It references anti-vortex but not anti-entrapment (Federal).</p> <p><u>Response 2</u>: ADEQ appreciates the comment. The Virginia Graeme Baker Pool and Spa Safety Act (VGBA), 15 U.S.C. § 8001 <i>et seq.</i>, took effect on December 19, 2008. One of VGBA's purposes is to prevent drain entrapment and child drowning in swimming pools and spas. 15 USC § 8003(B) states that swimming pool or spa drain covers shall conform to entrapment standards (ASME/ANSI A112.19.8).</p> <p>The VGBA’s requirements in 15 USC § 8003(B) and elsewhere are Federal law, applying to “...each swimming pool or spa drain cover manufactured, distributed, or entered into commerce in the United States...” 15 USC § 8003(C) applies to “...each public pool and spa in the United States...” These federal law requirements are enforceable by the federal government, and do not require states to enact laws reflecting the VGBA.</p> <p>ADEQ believes R18-5-226 in combination with the federal law to be sufficient as is, but will take this comment under advisement during any potential future rulemakings addressing 18 A.A.C. 5, Article 2. The Department will also gather further industry knowledge to verify the necessity of this recommendation.</p>
<p>R18-5-227</p>	<p><u>Criticism 1</u>: Change Subsection (E)(1) to “...20 gallons/minute/square foot.”</p> <p><u>Response 1</u>: ADEQ appreciates the comment. ADEQ believes the rule to be sufficient as is, but will take this suggestion under advisement during any potential future</p>

	<p>rulemakings addressing 18 A.A.C. 5, Article 2. The Department will also gather further industry knowledge to verify the necessity of this recommendation.</p>
R18-5-230	<p><u>Criticism 1</u>: Change to “[p]ublic and semipublic pools and spas shall be equipped with a flow meter which indicates the rate of backwash through the filter. The flow meter shall be installed after the filter on a straight section of pipe in accordance with the manufacturer’s specifications in a location where it can be read easily. The flow meter shall measure the rate of flow through the filter in gallons per minute and shall be accurate to within 5% under all conditions of flow. The flow meter shall have an indicator with a range of at least the design system flow rate.”</p> <p><u>Response 1</u>: ADEQ appreciates the comment. ADEQ believes the rule to be sufficient as is, but will take this suggestion under advisement during any potential future rulemakings addressing 18 A.A.C. 5, Article 2. The Department will also gather further industry knowledge to verify the necessity of this recommendation.</p>
R18-5-232	<p><u>Criticism 1</u>: Remove the third sentence from Subsection (D), “[t]he overflow gutter bottom shall be pitched 1/4 inch per foot to drainage outlets located not more than 10 feet apart.” Remove the word “float” from the fifth sentence in Subsection (D) so it reads as follows, “[t]he surge tank for the overflow gutters shall be equipped with controls which regulate the main drain, fill line, and overflow.” Replace “...water circulation system capacity” with “design flow rate” in Subsection (E)(3). Replace Subsection (E)(5) with “[s]kimmers shall be evenly spaced around the perimeter of a pool.” Change Subsection (E)(6) to “[m]ain drain piping shall be designed to carry at least 100% of the design flow rate.”</p> <p><u>Response 1</u>: ADEQ appreciates the comment. ADEQ believes the rule to be sufficient as is, but will take this suggestion under advisement during any potential future rulemakings addressing 18 A.A.C. 5, Article 2. The Department will also gather further industry knowledge to verify the necessity of this recommendation.</p>
R18-5-233	<p><u>Criticism 1</u>: Change to “[a] vacuum cleaning system shall be provided for each public and semipublic swimming facility. A vacuum cleaning system shall not create a hazard or interfere with the operation or use of the swimming pool or spa. Vacuum cleaner fittings may be installed as an attachment to the surface skimmers for pools or spas with four skimmers or less. A pressure cleaning system may be installed in addition to the required vacuum cleaning system. Pools with five or more skimmers or an overflow collection system shall provide a separate portable vacuum.”</p> <p><u>Response 1</u>: ADEQ appreciates the comment. ADEQ believes the rule to be sufficient as is, but will take this suggestion under advisement during any potential future rulemakings addressing 18 A.A.C. 5, Article 2. The Department will also gather further industry knowledge to verify the necessity of this recommendation.</p>
R18-5-234	<p><u>Criticism 1(a)</u>: R18-5-234(D) These two sentences: “The addition of dry or liquid disinfectant directly into a public or semipublic swimming pool or spa for routine disinfection is prohibited. This prohibition does not prohibit the use of liquid or dry disinfectants for shock treatment of a swimming pool or spa.” Should be replaced with the following sentence which is more clear and concise: “Chemicals added manually directly into the aquatic venue shall only be introduced in the absence of bathers. ” As specified in MAHC 5.9.2.4.1.1 and 5.9.2.4.1.2, superchlorination or shock chemicals and other pool chemicals other than disinfection and PH control may be added manually to the pool. However, to avoid concentrated chemical exposures, these additions should only be conducted when bathers are not present. The single proposed</p>

statement from MAHC 5.9.2.4.1.2 covers the two deleted sentences and any other chemical additions directly to the pool that should not be conducted in the presence of bathers (e.g. pH adjustment chemicals).

Response 1(a): ADEQ appreciates the comment. ADEQ agrees with this suggestion and suggests following the MAHC guidance language which prohibits the manual addition of chemical additions in the presence of bathers. ADEQ will take the MAHC guidance documents for language examples and will take this comment under advisement during any potential future rulemakings addressing 18 A.A.C. 5, Article 2.

Criticism 1(b): The following text should be removed: R18-5-234(G) “Granular, tablet, stick, and other forms of dry disinfectant shall be fed by an adjustable automatic feeding device.” This requirement is redundant with the first sentence in R18-5-234 A. “An adjustable automatic chemical feeder shall be provided to ensure the continuous disinfection of the water in a public or semipublic swimming pool or spa.”

Response 1(b): ADEQ appreciates the comment. R18-5-234(G) specifies a solid form of disinfectant which R18-5-234(A) does not clarify if it includes a solid form. R18-5-234(G) ensures that the dry product is not fed in an automatic way. Sodium hypochlorite (bleach) is more easily fed through an automatic way since its liquid, while calcium hypochlorite is the dry tablet with higher concentration of chlorine and is not as easily fed in an automatic way. The current rule language is acceptable.

Criticism 1(c): I would like to propose the following changes. R18-5-234(A) should read “Adjustable automatic chemical feeders for disinfection and pH adjustment chemicals shall be provided to ensure the continuous disinfection of the water in a public or semipublic swimming pool or spa.” In order to ensure the efficacy of chlorine disinfectants, the pH must also be controlled. The suggested text is consistent with the Model Aquatic Health Code (MAHC) Section 4.7.3.1.1.

Response 1(c): ADEQ appreciates the comment. ADEQ believes the rule to be sufficient as is, but will take this suggestion under advisement during any potential future rulemakings addressing 18 A.A.C. 5, Article 2. The Department will also gather further industry knowledge to verify the necessity of this recommendation.

Criticism 1(d): The following statement should be added to R18-5-234(A): “Only products that are EPA-registered as disinfectants or sanitizers for use in pools and spas shall be used.” The suggested text requiring EPA registration is consistent with the requirements in the MAHC and APSP-11. EPA requires that pesticidal chemicals and equipment be registered. It is important to have EPA registration to ensure efficacy and safety. It is important to be registered as a disinfectant or sanitizer because products for other uses (e.g. algaecides) are not sufficient for disinfection. It is important to be registered for pools because other applications, such as surface disinfectants (e.g. high concentrations of hydrogen peroxide), are not suitable for pools.

Response 1(d): ADEQ appreciates the comment. ADEQ believes the rule to be sufficient as is, but will take this suggestion under advisement during any potential future rulemakings addressing 18 A.A.C. 5, Article 2. The Department will also gather further industry knowledge to verify the necessity of this recommendation.

Criticism 1(e): R-18-5-234 B should be amended to read as follows: “The use of chlorinated isocyanurates or cyanuric acid stabilizer for disinfection and stabilization is prohibited in spas and indoor pools. If used, chlorinated isocyanurates shall be fed so as to maintain required disinfectant residual levels. Cyanuric acid (CYA) levels, whether from chlorinated isocyanurates or from the separate addition of cyanuric acid stabilizer, shall not exceed a ratio of 15:1 CYA: free chlorine.” Because CYA slows the disinfection rate of chlorine, its use should be prohibited in spas and indoor pools. Since the only practical way to remove cyanuric acid is to drain the pool water, prohibiting the use of stabilized sanitizers in indoor pools eliminates the requirement to drain the pool to remove CYA and promotes water conservation. There was an extensive debate about CYA during the last Council for the Model Aquatic Health Code (CMAHC) conference. The 15:1 ratio recommended here is based on Change Request 5.7.3.1.1.2-0002. This change request shows that if the 15:1 ratio is exceeded, then the efficacy of free chlorine is reduced below that of combined chlorine for killing Giardia. Numerous studies have been conducted showing the effect of CYA on disinfection. Please contact me if you would like a complete list of publications, a copy of CR 5.7.3.1.1.2-0002, or need any further information.

Response 1(e): ADEQ appreciates the comment. ADEQ believes the rule to be sufficient as is, but will take this suggestion under advisement during any potential future rulemakings addressing 18 A.A.C. 5, Article 2. The Department will also gather further industry knowledge to verify the necessity of this recommendation.

Criticism 1(f): The following text should be added to R18-5-234 H: “Flow-through chemical feeders shall only be used with the chemical (formulation, brand, size, and shape) specified by the chemical feeder manufacturer.” To prevent addition of incompatible chemicals into feeders and causing adverse reactions, only the chemical specified by the manufacturer should be used in the feeder. In addition to the safety aspect, NSF listing of feeders is only valid when the brand of chemical specified by the feeder manufacturer is used. This is because different sources of the same chemicals (e.g. calcium hypochlorite) may have different concentrations or different dissolving characteristics that will prevent the feeder from functioning at design capacity. The wording here was taken from MAHC 4.7.3.2.1.2.1. R18-5-234 I should be edited to read as follows: “The chemical control and feed systems shall be installed according to the manufacturer's instructions and the chemical feeder shall be wired so that chemical feed is disabled in the event of low flow or no flow conditions in the section of pipe where the chemical is injected.” Typically, only chemicals with low pH need to be restricted to introduction downstream from the heater. Some calcium hypochlorite feeders are listed by NSF with the manual showing feed to the suction side of the pump. This would be before the heater if a heater is present. This is possible due to the slightly alkaline nature of cal hypo solutions and the dilution that takes place in the filtration system. When dosing chlorine, the FAC in the pipe may rise from 1-2 ppm to around 10 ppm and the pH from 7.4 up to 7.6. Neither of these changes is detrimental to the pool heater. The proposed language is consistent with MAHC 4.7.3.2.1.3 and 4.7.3.2.1.4.

Response 1(f): ADEQ appreciates the comment. ADEQ believes the rule to be sufficient as is, but will take this suggestion under advisement during any potential future rulemakings addressing 18 A.A.C. 5, Article 2. The Department will also gather further industry knowledge to verify the necessity of this recommendation.

	<p><u>Criticism 1(g)</u>: The following text should be added to R18-5-234 “J. Automated controllers shall be installed for monitoring and turning on or off chemical feeders used for pH and disinfectants at all aquatic venues. All automated chemical controllers for pH and disinfectant monitoring /control shall be listed and labeled to NSF/ANSI 50 by an ANSI-accredited certification organization.” Outbreaks of chlorine sensitive pathogens such as E. coli and norovirus continue to occur due to the lack of a disinfectant residual. Particularly for hotels and motels that do not have a continuous presence of aquatics staff, controllers are needed to react to changes in bather load and other chlorine demand factors. This requirement should cover both disinfectant and pH additions. The suggested text is from MAHC 4.7.3.2.8.1 and 4.7.3.2.8.2.</p> <p><u>Response 1(g)</u>: ADEQ appreciates the comment. ADEQ believes the rule to be sufficient as is, but will take this suggestion under advisement during any potential future rulemakings addressing 18 A.A.C. 5, Article 2. The Department will also gather further industry knowledge to verify the necessity of this recommendation.</p> <p><u>Criticism 2</u>: This might fit into question 4 as it would be less of a burden for many who like to keep the pool chlorine higher than 3ppm. R18-5-234 currently requires 1-3ppm residual for free chlorine but many counties and states have adopted 1-5ppm for pools and this is consistent with the National Swimming Pool Foundation. This would be less burdensome and allow a higher and safe sanitization level.</p> <p><u>Response 2</u>: ADEQ appreciates the comment. ADEQ believes the rule to be sufficient as is, but will take this suggestion under advisement during any potential future rulemakings addressing 18 A.A.C. 5, Article 2. The Department will also gather further industry knowledge to verify the necessity of this recommendation.</p> <p><u>Criticism 3</u>: Section R18-5-234 Disinfection section 1 should increase the chlorine residual to 1.0 to 5.0 ppm for pools.</p> <p><u>Response 3</u>: ADEQ appreciates the comment. ADEQ is uncertain whether the commenter means from a chlorine residual of 1 to 3 ppm to a chlorine residual of 1 to 5 ppm or just go to a chlorine residual of 5 and above. ADEQ believes the rule to be sufficient as is, but will take this suggestion under advisement during any potential future rulemakings addressing 18 A.A.C. 5, Article 2. The Department will also gather further industry knowledge to verify the necessity of this recommendation.</p>
<p>R18-5-235</p>	<p><u>Criticism 1</u>: Like to see a change to the wording in R18-5-235(B)(3) from AVB to at least PVB or SVB. This way the protection can be tested annually to ensure public safety.</p> <p><u>Response 1</u>: ADEQ appreciates the comment, but is uncertain what commenter means to address. Currently R18-5-235(B)(3) discusses the use of at least a Pressure Vacuum Breaker (PVB) and not an Atmospheric Vacuum Breaker (AVB). ADEQ does not believe these are the same. One concerns pressure while the other addresses atmosphere.</p>
<p>R18-5-238</p>	<p><u>Criticism 1</u>: Section R18-5-238 Lifesaving and Safety Equipment – Requiring ring buoys for a public lifeguarded facility is obsolete. This equipment is not used for rescues. My other comment would be to ensure we are following and/or adopting the Model Aquatic Health Code (MACH) that is on the Centers for Disease Control and Prevention website. This was created and written by experts in the industry and has been adopted nationwide.</p>

	<p><u>Response 1:</u> ADEQ appreciates the comment. The rules call for a ‘ring buoy or a similar flotation device’. MACH is a national guidance developed by the CDC in collaboration between public health officials, the aquatics sector, and academic partners to develop the guidance. In the U.S., there is currently no federal regulatory agency that regulates or monitors public pools, hot tubs or spas, or water parks. This document addresses rescue tubes and ‘throwing devices’ which includes a buoyant life ring. It appears the rescue tubes are designed to provide a barrier between the victim and the lifeguard and to provide a handhold for both as well. It can be on the lifeguard with a strap over the shoulder and neck of the lifeguard, versus a ring buoy that is attached to a line and used to pull a victim to safety. The ‘rescue throwing device’ can be used by an untrained person to assist a distressed person. Not all pools have lifeguards and therefore, ring buoys’ importance remains.</p> <p><u>Criticism 2:</u> R18-5-238(A) states: ". . . lifesaving and safety equipment that is conspicuously and conveniently located . . .". This is not clear. This leaves the location of safety equipment up to individual interpretation. Our safety equipment was located in the same place for years, then one day we got a violation from Maricopa County Environmental Services saying the equipment needed to be closer to the pool and in a location where a person does not have to cross gravel to get to it. The rule would be better if it clearly specified an acceptable location for safety equipment, maximum distance from the pool, maximum height if wall mounted, visible from all angles inside the pool?? Does the surface between the pool and the safety equipment matter, rock, grass, pool deck, etc.?</p> <p><u>Response 2:</u> ADEQ appreciates the comment. Maricopa County may have additional requirements, more restrictive than State rule. ADEQ believes the rule to be sufficient as is, but will take this suggestion under advisement during any potential future rulemakings addressing 18 A.A.C. 5, Article 2. The Department will also gather further industry knowledge to verify the necessity of this recommendation.</p>
<p>R18-5-240</p>	<p><u>Criticism 1:</u> R18-5-240(B) & (F): The rule should address electronic keycard latches as this causes confusion for pool contractors and hotel and apartment managers and owners.</p> <p><u>Response 1:</u> ADEQ believes the rule to be sufficient as is, but will take this suggestion under advisement during any potential future rulemakings addressing 18 A.A.C. 5, Article 2. The Department will also gather further industry knowledge to verify the necessity of this recommendation.</p>
<p>R18-5-240</p>	<p><u>Criticism 1:</u> Add a Subsection (B)(5) as follows “[i]f gates are designed for ADA access, the latch may be lowered to meet this code. No latch will be allowed less than 42" above the ADA approach pavement. All emergency panic hardware on exit gates shall not allow for access to panic hardware from outside the enclosure.”</p> <p><u>Response 1:</u> ADEQ appreciates the comment. ADEQ believes the rule to be sufficient as is, but will take this suggestion under advisement during any potential future rulemakings addressing 18 A.A.C. 5, Article 2. The Department will also gather further industry knowledge to verify the necessity of this recommendation.</p> <p><u>Criticism 2:</u> Add additional sentence to the end of Subsection (F)(2), “[i]f doors are designed for ADA access, the latch placement shall be a minimum of 42" above the finish floor.”</p>

	<p><u>Response 2:</u> ADEQ appreciates the comment. ADEQ believes the rule to be sufficient as is, but will take this suggestion under advisement during any potential future rulemakings addressing 18 A.A.C. 5, Article 2. The Department will also gather further industry knowledge to verify the necessity of this recommendation.</p> <p><u>Criticism 3:</u> Change Subsection (F)(3) to “[e]mergency exits are not allowed to have direct access to the pool.”</p> <p><u>Response 3:</u> ADEQ appreciates the comment. ADEQ believes the rule to be sufficient as is, but will take this suggestion under advisement during any potential future rulemakings addressing 18 A.A.C. 5, Article 2. The Department will also gather further industry knowledge to verify the necessity of this recommendation.</p>
<p>R18-5-241</p>	<p><u>Criticism 1:</u> Change the second sentence of Subsection (D) to “[f]loors shall be sloped between 1/8 and 1/4 inch per foot toward the drains to ensure positive drainage. Carpeting is prohibited.”</p> <p><u>Response 1:</u> ADEQ appreciates the comment. ADEQ believes the rule to be sufficient as is, but will take this suggestion under advisement during any potential future rulemakings addressing 18 A.A.C. 5, Article 2. The Department will also gather further industry knowledge to verify the necessity of this recommendation.</p>
<p>R18-5-243</p>	<p><u>Criticism 1:</u> R18-5-243 requires a drinking water fountain on the pool deck. Although this is good in some situations it is unnecessary for the most part today at hotels, apartments, RV parks etc. and even in most public pools now bottled water is most often used. If this isn't eliminated I believe, as a regulator who sees many of these facilities already out of compliance, this rule should be limited to public pools not semi-public pools and spas.</p> <p><u>Response 1:</u> ADEQ appreciates the comment. ADEQ believes A.A.C. R18-5-243 is limited to semi-public swimming pools and spas only: <i>Drinking water from an approved source and dispensed through one or more drinking water fountains shall be located on the deck of each public swimming pool or spa.</i> ADEQ believes the rule to be sufficient as is, but will take this suggestion under advisement during any potential future rulemakings addressing 18 A.A.C. 5, Article 2. The Department will also gather further industry knowledge to verify the necessity of this recommendation.</p>
<p>R18-5-244</p>	<p><u>Criticism 1:</u> Change Subsection (D) to “[t]he floor of a wading pool shall be uniform with a maximum slope of 1 foot of fall in 12 feet in order to align with ADA code. The floor of a wading pool shall have a slip-resistant surface.”</p> <p><u>Response 1:</u> ADEQ appreciates the comment. ADEQ believes the rule to be sufficient as is, but will take this suggestion under advisement during any potential future rulemakings addressing 18 A.A.C. 5, Article 2. The Department will also gather further industry knowledge to verify the necessity of this recommendation.</p> <p><u>Criticism 2:</u> Change the final phrase of Subsection (K) to “...shall be provided in the area of the wading pool commensurate with ADA standards.”</p> <p><u>Response 2:</u> ADEQ appreciates the comment. ADEQ believes the rule to be sufficient as is, but will take this suggestion under advisement during any potential future rulemakings addressing 18 A.A.C. 5, Article 2. The Department will also gather further industry knowledge to verify the necessity of this recommendation.</p>

<p>Article 3</p>	<p><u>Criticism 1:</u> One potential concern is that the rule does not specify a timeline for 208 Plan approval. Arizona's Continuing Planning Process (1993) states that "ADEQ will, within 30 days of submittal, review the plan/amendment for consistency with federal and state laws and regulations and with state procedures contained in this document." However, the timeline is not reflected in the Arizona Administrative Code. A timeline for 208 Plan approval could be considered in the Arizona Administrative Code for consistency with the Continuing Planning Process and establishment of a standard review period.</p> <p><u>Response 1:</u> ADEQ appreciates the comment. While there is no timeline associated with the 208 rule for plan approval, it should be noted that there are multiple layers for internal 208 approval including staff, management and the WQ Director. ADEQ has established a LEAN approach with standard work to be more efficient with tasks and time of project review and approval. However, as each task can differ in complexity, sometimes the timelines differ for approval. ADEQ believes the rule to be sufficient as is, but will take this suggestion under advisement during any potential future rulemakings addressing 18 A.A.C. 5, Article 3.</p>
<p>Article 4</p>	<p><u>Criticism 1:</u> Article 4 makes references to bulletins which, at least for septic subdivisions, have not been in use since 2001.</p> <p><u>Response 1:</u> ADEQ appreciates the comment, but disagrees. R18-5-408 is the only rule in the Article that references “bulletins”. Engineering bulletins are still endorsed and used by ADEQ and are required to be used in the Arizona Administrative Code. For example, there is an expectation for applicants to use Engineering Bulletin #10 (May 1978 version) as a reference for how to design a water system. Furthermore, Engineering Bulletin #10 states that disinfection is to be done in accordance with Engineering Bulletin #8. Therefore, both engineering bulletins (No.s 8 & 10) are connected to AAC requirements at the present time.</p>
<p>R18-5-404</p>	<p><u>Criticism 1:</u> R18-5-404 should just limit the size to 1 acre, period. There is too much flexibility built into the language, and creep occurs after the permit is issued and the reserve and primary leach fields are driven across or sheds placed on top and expansion of home.</p> <p><u>Response 1:</u> ADEQ appreciates the comment, but disagrees. Not all lots can be an acre in a subdivision encompassing onsite wastewater treatment systems and not everyone can afford an acre. The rule states that if the well and onsite are located on the same lot, then the lot must be a minimum of an acre. However, if water is provided from a central distribution system for residential uses, then the lot only has to be large enough to accommodate the disposal system and 100 percent expansion based on a four-bedroom home. The rule already allows for a larger expansion if the home is only 3 bedrooms or less. Additionally, if the homeowner is using the primary and reserve areas for other than what they were approved for, then they are not in compliance with the rule. Requiring that the lot be a minimum of one acre in any instance does not guarantee the misuse of the primary or reserve area.</p>
<p>R18-5-405</p>	<p><u>Criticism 1:</u> R18-5-405 I would like to see a subdivider be required to put in a shared well for the lots or set aside an area and require it instead of having each lot put in it's own well.</p> <p><u>Response 1:</u> ADEQ appreciates the comment. ADEQ is uncertain how this comment impacts the authority of ADWR and would need further information to respond. Nonetheless, ADEQ believes the rule to be sufficient as is, but will take this</p>

	<p>suggestion under advisement during any potential future rulemakings addressing 18 A.A.C. 5, Article 4.</p>
<p>R18-5-407</p>	<p><u>Criticism 1(a)</u>: Common element sewers serving within condominium properties are exempt from the rule R18-5-811. I can't seem to find this rule in the codex.</p> <p><u>Response 1(a)</u>: ADEQ appreciates the comment. R18-5-407(C) states,</p> <p style="text-align: center;"><i>“Proposed sewage disposal facilities shall comply with A.A.C. Title 18, Chapter 9, Article 8, except those drain lines which are a common element of a condominium shall be exempt from R18-5-811.”</i></p> <p>The “5” in 407(C)’s reference of “R18-5-811” is a typo. 407(C) should refer to R18-9-811, which was titled, “Separation of water and sewer mains”. However, the rule was repealed in September of 2000. 811 was integrated into the current rule, R18-5-502(C). ADEQ will take this suggestion under advisement during any potential future rulemakings addressing 18 A.A.C. 5, Article 4.</p> <p><u>Criticism 1(b)</u>: The commenter does not have any issue with this rule unless R18-5-811 exempts condominiums from O&M responsibilities for their sanitary systems. In that case, I would have some major objections.</p> <p><u>Response 1(b)</u>: See Response to Criticism 1(a) above. Additionally, while 407(C) states that “...drain lines which are a common element of a condominium...” are exempt from 811 (which is now 502(C)), neither rule exempts condominiums from O&M responsibilities for their sanitary systems. ADEQ will take this suggestion under advisement during any potential future rulemakings addressing 18 A.A.C. 5, Article 4.</p> <p><u>Criticism 2</u>: Title 18. Chapter 5. Article 4 of the AAC includes that following: AAC R18-5-407 - Public sewerage systems - Subsection C - Proposed sewage disposal facilities shall comply with A.A.C. Title 18, Chapter 9, Article 8, except those drain lines which are a common element of a condominium shall be exempt from R18-5-811 (please direct me to this section as it is not found in the current AAC). The Industry is using the language above, to justify use of the Uniform Plumbing Code to install smaller diameter sewer lines (i.e. 4 and 6 inch) to serve multiple dwelling units (sometimes referred to as casitas) in proposed subdivisions. Commenter has concerns since the industry has used the AAC language to bypass County review and make the case that the plumbing code and not the A.A.C. is applicable code. We feel that the plumbing code standards do not adequately address the health and safety requirements for the utility lines at these developments. For example, a recent plan review included 4” sewer lines with multiple 90 degree bends connecting to as many as 10 detached housing units. There is a major potential for clogging at these locations. Our intent is to prevent such scenarios. We want to ensure that a thorough review is made to provide a safe and healthy environment to the residents of the County.</p> <p><u>Response 2</u>: ADEQ appreciates the comment. The current sewage collection system rules (4.01 rules) require sewer lines to be 8-inches or larger with the exception of 6-inch lines that are a maximum of 400 feet and are a dead end line with no potential for expansion. We have seen many facilities design systems under 3,000 gpd with 6-inch lines.</p>

	<p>Under R18-9-B301(K), the type 1.11 permit allows the operation of a sewage collection system that serves upstream from the point where the daily design flow is 3000 gallons per day to the building drains, or a single gravity sewer line conveying sewage from a building drain directly to an interceptor, lateral, or manhole, regardless of daily design flow, if all of the following items (1-8) are met.</p> <p>Commenter states that the 4-inch line cannot handle the flow of the casitas and would further cause blockages or clogging. Cleanouts are required according to the Uniform Plumbing Code. Such changes like long sweep bends and clean outs may help address clogging issues. It should also be noted that a 4-inch sewer line at 1% slope has a high conveyance capacity. It would be difficult to require the Type 4.01 GP (R18-9-E301) for the construction of sewer lines conveying flows from Casitas or multiple dwelling units as it can also cause some issues with clogging and low flows, and low flow velocities. The wetter perimeter for a 4-inch line is much smaller than for an 8-inch sewer line. The 4.01 GP in R18-9-E301(B)(2) requires that the sewage collection system minimize sedimentation, blockage, and erosion through appropriate sizing, capacities, and inflow and infiltration prevention measures throughout the system. ADEQ believes the current rule should stand as written.</p>
<p>R18-5-408</p>	<p><u>Criticism 1:</u> R18-5-408(B) Are these accepted conditions, i.e. rock, slope, etc.? What Bulletin spells this out? R18-5-408(E)(1): "qualified person" - I see this a lot, and it is difficult to define and enforce. Who is a qualified person, years of experience? reputation of good systems? R18-5-408(E)(2): At what point are the tests submitted to the Department? Preliminary Plat? We had a subdivision that submitted this data to the Department and she lied about a rock shelf 4 ft down. We knew about it but ADEQ did not. Now we have conventional systems in the ground that fail. Cooperation with local officials? At what point is it stated that the subdivision cannot do conventional due to Nitrogen loading? How do we note that 25% of the lots will be required to do a treatment system, and how do we identify which lots will have to do that? Can we note on the Preliminary Plat and Final Plat which lots will be allowed to do conventional and which will be required to do alternate? Thoughts.</p> <p><u>Response 1:</u> ADEQ appreciates the comment. Subsection A references an older version of Engineering Bulletin #12 which is no longer used and has been replaced with the current rules in Chapter 9. ADEQ understands the qualifications for a site investigation to fall under Chapter 9 R18-9-A310(H) and are not referenced in the Chapter 5 subdivision rules. The nitrogen loading requirements for subdivisions can be found on R18-9-A309(A)(8)(c) which is currently not referenced in the subdivision rules. Based on the calculations and how much nitrogen is loaded by the subdivision, the requirement of an alternative system to reduce nitrogen loading may be required. Additionally, a conventional or alternative system is not solely associated with nitrogen loading. Other subsurface and surface limiting conditions may apply that require the use of an alternative system or allow the use of a conventional system. ADEQ will take this suggestion under advisement during any potential future rulemakings addressing 18 A.A.C. 5, Article 4.</p>
<p>Article 5</p>	<p><u>Criticism 1:</u> [What other feedback do you have concerning the rules in Article 5?] None, unless R18-5-811 exempts condominiums from O&M responsibilities for their sanitary systems. In that case, I would have some major objections</p> <p><u>Response 1:</u> ADEQ appreciates the comment.</p>

Criticism 2: R18-4-217. Use of Blending to Achieve Compliance with Maximum Contaminant Levels Blending is a type of treatment and should be housed/captured under Article 5 or at minimum should reference ATC/AOC approval under Article 5.

Response 2: ADEQ appreciates the comment. Blending is currently captured under R18-5-505(B) when a public water system "make[s] an alteration that will affect the treatment, capacity, water quality...." While ADEQ believes its current rules adequately protect human health and the environment, ADEQ agrees that increased clarity would benefit those relying on the rules. ADEQ will take the comment under advisement during any potential future rulemakings addressing the rules in 18 A.A.C. 5, Article 5.

Criticism 3: A.A.C. R15-5-505 through 508 appear to apply only to modifications of municipal supply wells in addition to all other water system components. The rules call for the approval applications to be prepared by engineers. Engineers are rarely involved with modifications to the structure of municipal supply wells' casing and screen. In fact, the Arizona Department of Water Resources (ADWR) has purview over construction and modification of wells. The District recommends that all well work that is under the purview of ADWR be exempted from ADEQ's Minimum Design Criteria rules.

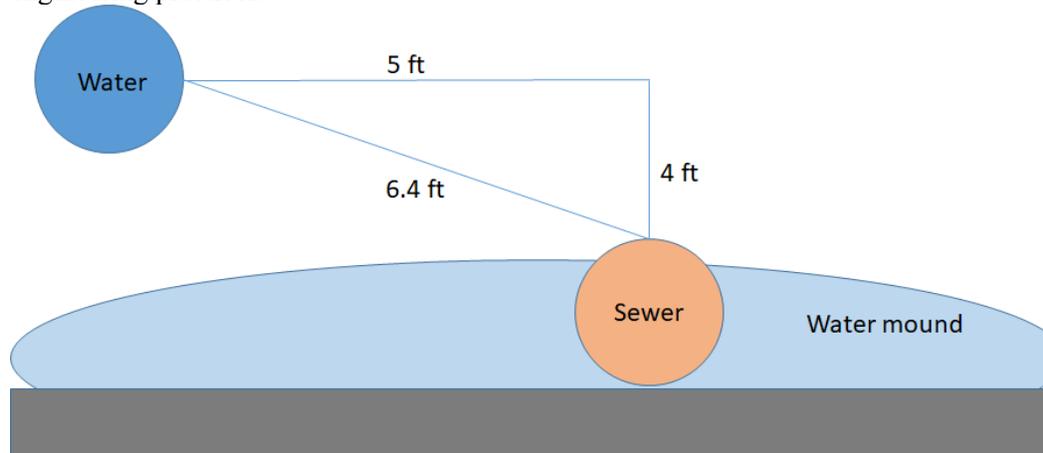
Response 3: ADEQ appreciates the comment. Wells must be approved by ADEQ to ensure the protection of human health. Arizona Department of Water Resources permits well drilling and ADEQ permits potable use of the well. ADEQ also enforces siting requirements to ensure the well is not in a flood zone, too shallow, etc. ADEQ's process combines New Source Analysis with well approvals.

Criticism 4: Commenter would like to submit a couple of observations on the pending review of the above-described regulations. First, Arizona's Potable Water Systems statute requires that ADEQ "shall" "provide for a simplified administrative procedure for approving structural revisions, additions, extensions or modifications to existing small public water systems for potable water serving a population of three thousand three hundred or fewer persons" (A.R.S. 49-353(A)(2)(d)). This statutory mandate is in addition to the statutory language in A.R.S. 49-353(A)(2)(e) that creates plan review exemptions for projects with costs less than \$12,500 or less, or for projects with costs more than \$12,500 but less than \$50,000. It does not appear that ADEQ's current regulations provide any type of "simplified administrative procedure" for approving modifications to existing small public water systems. Commenter requests that ADEQ revise its ATC/AOC regulations to provide the "simplified administrative procedure" for extensions, additions, or modifications to existing small systems (serving 3,300 persons or less) as mandated by statute.

Response 4: ADEQ appreciates the comment. ADEQ's website (<http://www.azdeq.gov/node/3366>) provides applicants with a variety of forms and resources to simplify the approval process, including construction plan and design report examples. As a convenience, ADEQ allows fees to be paid electronically and applications to be submitted via email. ADEQ recommends that Approval to Construct applicants take advantage of the complimentary pre-application meeting with ADEQ's engineering review team. ADEQ is working to develop procedures to further assist applicants through the plan review exemption process. Arizona encourages all

	<p>applicants eligible for exemptions to pursue them. ADEQ continues to strive to simplify its approval processes.</p> <p><u>Criticism 5:</u> Add “Definitions” section (to match sections 1-4)</p> <p><u>Response 5:</u> ADEQ appreciates the comment. While ADEQ believes its current rules adequately protect human health and the environment, ADEQ agrees that increased clarity would benefit those relying on the rules. ADEQ will take the comment under advisement during any potential future rulemakings addressing the rules in 18 A.A.C. 5, Article 5.</p>
<p>R18-5-501</p>	<p><u>Criticism 1:</u> There a lot of domestic water systems that were installed within flood plains prior to SDWA regulations. If a new well is required to expand the system, because of hydrogeologic and sub-flow conditions, it would not be feasible to comply with the 100-year flood plain criteria.</p> <p><u>Response 1:</u> ADEQ appreciates the comment. Protecting the well head from flooding is imperative. In this instance, the well head would need to be "built up" above the floodplain to provide for proper protection.</p>
<p>R18-5-502</p>	<p><u>Criticism 1:</u> The rules within R18-5-502 are concise, clear and understandable. The problem arises from R18-5-502 calling out Engineering Bulletin No.10 for design purpose. The Bulletin is not concise nor clear. To make matters worse, commenter’s staff makes up their own conclusion of rules based on Bulletin No. 10 and these made up rules CONFLICT with R18-5-502. For Example: The RULE, when extra protection is required are clearly defined within R18-5-502(C)(1). However, extra protection requirement is NOT clearly defined in Engineering Bulletin No. 10. And, yet commenter’s staff reference to Engineering Bulletin No. 10 and make an interpretation of the extra protection requirement based on the latter document. For example, per commenter’s staff, waterline parallel with existing sewer line within 6 feet horizontally, regardless the depth of sewer main below new water line extra protection is required. If the protection is required as currently defined within R18-5-502(C) then it needs to be explained to commenter’s staff what is in the Code. [Do the rules in Article 5 impose the least burden possible to achieve the objective?] No it does not. Since it references Engineering Bulletin 10, the commenter’s review and approval staff make up their own rules and put a tremendous burden on Municipal utilities.</p> <p>Provide a legal type memo to all designers, reviewers, etc. to explain extra protection requirement. Everyone should have an understanding that follows the Code.</p> <p><u>Response 1:</u> ADEQ appreciates the comments. Generally speaking, ADEQ will take them under advisement during any potential future rulemakings addressing the rules in 18 A.A.C. 5, Article 5. While ADEQ believes its current rules adequately protect human health and the environment, ADEQ agrees that increased clarity and illustrations would benefit those relying on the rules. For example, see below. The water line is parallel to the sewer line but less than 6 feet horizontal distance. The sewer below is greater than 2 ft and lies 4 ft below the water line and the diagonal distance is 6.4 ft. On a quick look, it appears that the water line is protected. However, based on the scenario below, a subsurface limiting condition such as a clay layer can cause wastewater from the leaking sewer pipe to mound, and based on the soil conditions, the wastewater may travel upward toward the water line - potentially submerging the water line. If the water line corroded leaking small amounts of water, the wastewater could transmit bacteria to the water line.</p>

Further, ADEQ works with applicants to ensure they are aware of all Approval to Construct/Approval of Construction requirements. Any questions or concerns regarding Engineering Review may be directed to wqd_dwser@azdeq.gov or (602) 771-4559. Further, ADEQ encourages all delegated authorities to provide regular trainings on engineering requirements to ensure consistent application of good engineering practices.



Criticism 2(a): Page 26 – Article 5. Minimum Design Criteria; Add “Definitions” section to match Articles 1-4.

Response 2(a): ADEQ appreciates the comment. While ADEQ believes its current rules adequately protect human health and the environment, ADEQ agrees that increased clarity would benefit those relying on the rules. ADEQ will take the comment under advisement during any potential future rulemakings addressing the rules in 18 A.A.C. 5, Article 5.

Criticism 2(b): Page 26 – R18-5-502(A); References Engineering Bulletin No. 10 as an example of good engineering practices, however it conflicts with R18-5-502(C)((1)(a) regarding vertical clearance below the sewer main. R18-5-502(C)(1)(b) defines that a water main shall not be placed within 2 feet vertical distance below a sewer main. Chapter 7, (H)(4) Unusual Conditions, 2nd Sentence of Engineering Bulletin No. 10 defines that a water main shall not be placed within 18 inches vertical distance between the bottom of sewer main and top of the water main. The 18” measurement in Engineering Bulletin No. 10 is in conflict with Arizona Administrative Code and MAG. The Engineering Bulletin No. 10 should be updated, or another guideline should be referenced in its place or the AAC should be changed to be consistent.

Page 26 – R18-5-502(C)(1)(a) - Within 6 feet, horizontal distance, and below 2 feet, vertical distance, above the top of a sewer main unless extra protection is provided.

- Provide illustration which depicts the extra protection requirement for gravity sewer main and pressurized sewer main for parallel installations and crossing installations. For illustration example see MAG Uniform Standard Detail 404-1, 404-2, 404-3.
- In addition to providing illustration (Option 1): Replace first sentence with the following sentences: Within 6 feet horizontal distance and 2 feet vertical distance above a gravity sewer main unless extra protection is provided.

Within 6 feet horizontal distance and any vertical distance below a gravity sewer main unless extra protection is provided. Within 6 feet horizontal distance and 6 feet vertical distance above a pressurized sewer main unless extra protection is provided. Within 6 feet horizontal distance and any vertical distance below a pressurized sewer main unless extra protection is provided.

- In addition to providing illustration (Option 2): Suggest changing “below” to “within”. This would be consistent with MAG Uniform Standard Specifications and Details.

Page 26 – R18-5-502(C)(1)(b) - Within 2 feet horizontally and 2 feet below the sewer main.

Replace first sentence with the following sentences: Within 2 feet horizontal distance and 1-foot vertical distance above for a gravity sewer main. Within 2 feet horizontal distance and 2 feet vertical distance below a gravity sewer main. Within 6 feet horizontal distance and 2 feet vertical distance below a pressurized sewer main. Within 6 feet horizontal distance and 2 feet vertical distance above a pressurized sewer main.

Provide illustration which depicts the areas where no water mains are allowed for gravity sewer main and pressurized sewer main for parallel installations and crossing installations. For illustration example see MAG Standard Detail 404-1, 404-2, 404-3. This would be consistent with MAG Uniform Standard Specifications and Details.

The rules, especially R18-5-502(C)(1) are not clearly defined and as a result are open to interpretation by commenter regarding when extra protection is required. This can be easily cleared up by providing illustrations for parallel and crossing installations that define where a water main is prohibited and where it is allowed with extra protection in relation to a sewer main. The way the extra protection requirement is currently being interpreted by commenter (which is different than in the past) is causing a significant financial burden to taxpayers and extending design and construction schedules. Currently commenter requires extra protection of an existing sewer main anytime a new water main is constructed within 6 feet horizontally regardless the depth of the sewer main below the new water main. On many established streets right-of-way is limited and finding a horizontal corridor to place a replacement water main is difficult when attempting to avoid the extra protection requirement. Following commenter’s current interpretation, 6 feet of horizontal separation from a sewer main would need to be maintained even if the sewer main was 30 feet below the new water main. In many instances, municipalities spend time and money working with commenter to try to get an exception. If an exception is not granted, the financial burden of providing extra protection is realized in additional design costs and construction costs for the municipality which are ultimately borne by the taxpayer. The design and construction of public water systems needs to be done while holding the public health and safety at the highest regard and there should not be any ambiguity regarding how this is accomplished. The current interpretation by commenter is not consistent with R18-5-502(C), Engineering Bulletin No. 10 or MAG Uniform Standard Specifications and Details. A set of illustrations defining where a water main is prohibited and where it is allowed with extra protection in relation to a sewer main for parallel and crossing installations would bring needed clarity to this issue. For illustration examples, see MAG Uniform Standard Detail 404-1, 404-2, 404-3.

It is imperative that a set of illustrations defining where a water main is prohibited and where it is allowed with extra protection in relation to a sewer main for parallel and crossing installations. This would remove ambiguity and provide clear direction to regulators (commenter), local government agencies, and the engineering community regarding the extra protection requirement. For illustration examples, see MAG Uniform Standard Detail 404-1, 404-2, 404-3.

Response 2: ADEQ appreciates the comments. Generally speaking, ADEQ will take them under advisement during any potential future rulemakings addressing the rules in 18 A.A.C. 5, Article 5. While ADEQ believes its current rules adequately protect human health and the environment, ADEQ agrees that increased clarity and illustrations would benefit those relying on the rules.

However, commenter's reference to inconsistencies related to "unusual conditions" in Engineering Bulletin #10 and the Arizona Administrative Code are captured by A.A.C. R18-5-502(C)(6), which provides that "[r]equests for authorization to use alternate construction techniques, materials, and joints shall be reviewed by the Department, and such requests may be approved on a case-by-case basis."

Criticism 3: For Section R18-5-502 C. 1. a. Regarding the requirement for ductile iron for sewer per this section, we have a high failure rate for lined ductile iron in sewer applications and we would prefer to have an option to provide encased PVC at water/sewer crossings requiring extra protection.

Response 3: ADEQ appreciates the comment. Pima County has stated that they have years' worth of data that demonstrates that DIP fails in many cases, especially where the liner has degraded over time and caused higher maintenance issues and failures. The rule allows for the use of another material through the alternate material in R18-5-502(C)(6). While ADEQ believes its current rules adequately protect human health and the environment, ADEQ will take the comment under advisement during any potential future rulemakings addressing the rules in 18 A.A.C. 5, Article 5.

Criticism 4: R-18-5-502 B. suggest deleting "at ground level" to help clarify section. C.1.a. to clarify section suggest the following revision: "Within 6 feet, horizontal distance, and below within 2 feet vertical distance, above the top of a gravity sewer main..." C.1.b. To clarify the section suggest the following revision: "Within 2 feet horizontally, and 2 feet vertically below the gravity sewer main..." ADD new section C.1.c. Suggest adding: "Within 2 feet horizontally and 1 foot vertically above the gravity sewer main." C.5.a,b. Water main pipe" used for sewer or Force Main is confusing. This can be revised as "Pressure pipe, tested in place to withstand XY psi without excessive leakage, is used for....".

Response 4: ADEQ appreciates the comments. While ADEQ believes its current rules adequately protect human health and the environment, ADEQ agrees that increased clarity would benefit those relying on the rules. ADEQ will take the comments under advisement during any potential future rulemakings addressing the rules in 18 A.A.C. 5, Article 5.

Criticism 5: R18-5-502-C-1a requires Sewer pipe extra protection to used mechanical joint ductile iron pipe. Revised this requirement to use PVC or HDPE pipe material. Ductile iron pipe used in sewer, corrodes and has a short life span.

Response 5: ADEQ appreciates the comment. While ADEQ believes its current rules adequately protect human health and the environment, ADEQ agrees that increased clarity would benefit those relying on the rules. ADEQ will take the comments under advisement during any potential future rulemakings addressing the rules in 18 A.A.C. 5, Article 5.

Criticism 6:

The pipe materials and construction methods available in 1978, driving the language to use cast iron pipe (now DIP), are not the conditions seen now. Pressure rated C900 PVC provides excellent leak protection, provides a high level of structural protection, and has few constraints related to installation. Pressure rated C900 PVC exhibits stiffness that permits free spanning of structures with no leakage expected. This is often the scenario when gravity sewer spans a drainage structure or water line during construction of said utility.

As an alternative to pipe replacement, existing vitrified clay (VCP) and cement asbestos (CA) pipe integrity can be greatly enhanced using proven CIPP lining of the pipe. Commenter approved CIPP lining provides for a pipe from manhole to manhole with functionally zero joints, reducing potential for leaks. Once the resin cures, it is inert,

smooth, and performs similar to PVC. Over the last ten years, commenter has employed CIPP to renew DIP, VCP, and ACP gravity sewers.

The alternatives found in R18-5-502 specifying pipe encasement in concrete and pipe replacement using DIP are undesirable to commenter.

Alternatives presented and practiced by other agencies offer the intended protection of the potable water system while removing the liability associated with the failure of the interior DIP lining systems leading to sewerage leakage. The recommendations herein are considered best practice where reclaimed water lines pass beneath sanitary sewers. Commenter proposes the same criteria apply to Alternative Features for protection of potable water.

Recommendation:

Commenter recommends the following three Alternative Features to R18-5-502. Recommendations are based on the practices of other agencies and the opinion of commenter that sufficient protection of the potable water is maintained through their application.

1. For existing gravity sewer requiring replacement for the extra protection of potable water lines, the replacement pipe shall be ANSI/AWWA C900-16 Dimension Ratio 25 / Pressure Class 165 pipe at locations defined at R18-5-502.C.1.a. and b.
2. Existing sewer pipe may be CIPP lined and protected in place when a new water line crosses beneath the existing sewer. In order to maintain pipe integrity, special backfill consisting of Control Low Strength Material (CLSM) will be used to backfill above the water trench and beneath the CIPP lined sewer in a fashion to prevent settlement. Said procedure is dependent on no HCS connections to vitrified clay or to asbestos cement the pipe for 6 ft. in either direction of the water line crossing location.

3. When a new waterline crosses more than two (2) feet below the sewer, construct the water main with mechanical joint ductile iron pipe or with slip-joint ductile iron pipe if joint restraint is provided [].

Response 6: ADEQ appreciates the comment. While ADEQ believes its current rules adequately protect human health and the environment, ADEQ will take the comment under advisement during any potential future rulemakings addressing the rules in 18 A.A.C. 5, Article 5.

Criticism 7: A.A.C. R15-5-502(A) references Engineering Bulletin 10 dated May 1978. The rule further states “no future editions” are allowed. Many parts of Engineering Bulletin 10 are woefully out of date. The District recommends the following:

- A. ADEQ convene a stakeholder committee to update Engineering Bulletin 10,
- B. Delete “no future editions” from the rules, and
- C. The rules should require periodic updating of the Engineering Bulletin.

Response 7: ADEQ appreciates the comments. While ADEQ believes its current rules adequately protect human health and the environment, ADEQ will take the comments under advisement during any potential future rulemakings addressing the rules in 18 A.A.C. 5, Article 5.

However, pursuant to A.R.S. 41-1028(B), ADEQ is required to "state that [any material incorporated by reference] does not include any later amendments or editions of the incorporated matter."

Criticism 8: A.A.C. R15-5-502(C)(1)(a) requires extra protection when a water main is placed within 6 feet, horizontal distance, and below 2 feet, vertical distance, above the top of a sewer main unless extra protection consisting of replacing the sewer with ductile iron pipe or encasing both the water and sewer mains in at least 6 inches of concrete for at least 10 feet beyond the area is provided. In discussion with others, removing and replacing a section of existing sewer is not always desirable and concrete encasement of both water and sewer makes future maintenance and repairs difficult. Low strength concrete should be evaluated to determine if it provides sufficient protection for the sewer from damage and unanticipated exfiltration due to accidental point loading from excavation or from improper backfill. Another alternative for consideration where a new waterline is crossing an existing sewer is to install the waterline in a welded steel casing extending a minimum of 10 feet either side of the crossing, similar to that used for jack and bore.

Response 8: ADEQ appreciates the comments. While ADEQ believes its current rules adequately protect human health and the environment, ADEQ will take the comments under advisement during any potential future rulemakings addressing the rules in 18 A.A.C. 5, Article 5.

Criticism 9: Regarding water/sewer crossings, Tucson Water is quite satisfied with our current standard which specifies that at such crossings the sewer main should be constructed of Ductile Iron Pipe (DIP) or in the case of an existing sewer main it should be replaced with Ductile Iron Pipe (DIP). This standard is predicated on AAC R18-5-502. Minimum Design Criteria.

However, we understand that some wastewater entities have concerns with DIP due to the corrosive nature of sewage and the deterioration of the interior lining. Nevertheless, Tucson Water does not see PVC C900 as a viable alternative to DIP at water/sewer crossings due to the fact that any PVC pipe does not have the same resilience and toughness of DIP. During emergency water main repairs, if Tucson Water maintenance crews accidentally hit a PVC sewer the result very likely will be catastrophic failure of the sewer main with a high chance of contamination. If a DIP sewer is accidentally hit, a catastrophic failure is highly unlikely.

Our utmost concern is of course with public health and the delivery of good, safe water to the public.

Some proposed solutions for water/sewer crossings are the following:

1. If PVC C900 is used for the sewer main it should be armored in some effective manner such as enclosing it within a steel casing.
2. Utilizing a different pipe material that provides the resilience and toughness of DIP and will not be vulnerable like PVC. One suggestion, at least for larger diameter pipes might be Hobas Pipe. This product is a centrifugally cast fiberglass reinforced polymer mortar pipe.

Response 9: ADEQ appreciates the comments. While ADEQ believes its current rules adequately protect human health and the environment, ADEQ will take the comments under advisement during any potential future rulemakings addressing the rules in 18 A.A.C. 5, Article 5.

Criticism 10(a): 1. Water and Sewer Separation Requirements. Commenter has found that different cities and engineering firms have varied interpretations of the below Arizona Administrative Code (AAC) provision and the attached Maricopa Association of Government (MAG) Details. Some highlight MAG Detail 404-1 and believe that no extra protection is required where water mains are installed outside Zone B (ex. A water main installed with 3 ft. horizontal separation and 3 feet vertical separation from an existing gravity sewer main would require no extra protection). Others interpret the above provision to indicate that extra protection is required any time a water main is installed parallel and within 6 feet horizontal separation from a gravity sewer main. The varied interpretations show a need for clarifying language in the code and any revisions to Chapter 5 would need to be cross-checked with Chapter R18-9-E301.4.01.

Response 10(a): ADEQ appreciates the comment. Minimum separation requirements are 2' vertical and 6' horizontal per Engineering Bulletin #10, Chapter 7, Section F. If potable waterlines are installed within the minimum requirement, then extra protection is required. ADEQ believes its current rules adequately protect human health and the environment. Further, ADEQ does not believe that the sewer lines can always be regulated under the Type 4.01 permit. A Type 1.11 General Permit allows the operation of a sewage collection that serves upstream from the point where the daily design flow is 3000, gpd to the building drains, or single gravity sewer line conveying sewage from a building drain directly to an interceptor, lateral or manhole.

Criticism 10(b): Applicability of "Minimum Design Criteria" to Condominium Developments. Commenter has found that developers are submitting developments

consisting of multiple duplexes and individual units under the banner of a “Condominium” as described in R18-5-410 and claiming that the Uniform Plumbing Code governs design as opposed to the AAC. This can result in reduced water/sewer sizing and separation requirements as compared to those possibly required per the AAC. Language clarifying which codes are applicable might be of value.

Response 10(b): ADEQ appreciates the comment. The developments in question are reviewed by ADEQ to determine whether they meet the definition of a PWS. Every PWS is subject to A.A.C. R18-5-502 (minimum design criteria). All non-PWSs are regulated under the Uniform Plumbing Code. However, connections to non-PWS facilities must be properly protected by backflow devices subject to ADEQ rules.

Criticism 10(c) Public Water System Well Setbacks. R18-5-502 does not reflect a required setback distance from a livestock yard.

Response 10(c): ADEQ appreciates the comment. ADEQ's Source Water Protection Program identifies best management practices that address livestock operations. ADEQ will review setback requirements in a potential future rulemaking.

Criticism 10(d): Issue: The 20 pounds per square inch requirements under all conditions of flow needs to clarify that ‘all conditions of flow’ includes fire flows. Refer to Comment #1 for additional information about fire flows. Maintaining a minimum system pressure for fire flows is a major concern for small PWSs or PWSs located in rural settings. This design criteria includes fire flow minimum system pressure supplied via elevated storage or via pumps.

Recommendation(s):

- Modify the rule to clarify that fire flow is considered as part of the ‘all conditions of flow’ criteria. Perhaps this recommendation can be implemented as a Substantive Policy Statement by the ADEQ instead of a rule change.

Response 10(d): ADEQ appreciates the comment. While ADEQ believes its current rules adequately protect human health and the environment, ADEQ agrees that increased clarity would benefit those relying on the rules. ADEQ will take the comment under advisement during any potential future rulemakings addressing the rules in 18 A.A.C. 5, Article 5.

Criticism 10(e):

-- Issue #1: Regarding R18-5-502(D).3, the concept that a 100’ separation from an APP discharge being sufficient to prevent contamination of a drinking water well needs to be re-examined.

Consider the following example case:

An injection or vadose zone well injecting 3,000 gpm of reclaimed water into the saturated zone of an aquifer at a depth of 400’ with a drinking water recovery well located horizontally 101’ feet away, drawing water at 400’ depth and 3,000 gpm. These wells are in close horizontal proximity to one another, at the same depth and pumping at approximately same flow rate. This is a ‘legal’ configuration under rule as the two wells are >100’ apart horizontally.

The following questions arise from this particular case:

- What is the assurance that recharged reclaimed water is not short-circuiting to the drinking water well?

- Since reclaimed water is not treated to remove or inactivate *Cryptosporidium* and *Giardia lamblia*, how can there be no risk from biological contamination?
- How can a blanket 100' separation distance be viewed as safe in light of the case studies listed in Exhibit 1.3 of the EPA's "Source Assessment Guidance Manual" reference document?

This case illustrates potential concerns with any recharge activity to the saturated zone of an aquifer negatively impacting a drinking water well due to biologically active or contaminated recharge water, or contamination due to geological impacts (e.g. leaching contaminants from underground geological structures due to pH, corrosivity issues, etc.) caused by the recharged water.

Note: Surface recharge activities (percolation ponds, irrigation, etc.) and subsurface recharge activities (subsurface infiltration systems, drywells, shallow seepage pits, etc.) not connected to the saturated zone of an aquifer do not pose a major concern for biological contamination. Soil Aquifer Treatment (SAT) and other attenuation action provided by soils treats or inactivates any biologically active water being recharged. This also may be true in some cases for certain chemical contaminants. Please note that these concerns are not just limited to reclaimed water being recharged but are also a concern for any type of water being recharged.

For example, recharge of raw CAP water to an aquifer is exempt and not regulated by an Aquifer Protection Permit as specified by Arizona Revised Statute (ARS) §45-250(B).13. Raw CAP water is a biologically active surface water. Locating a drinking water well in close proximity to a CAP water recharge facility is problematic since the water being recharged is biologically active. This would be of particular concern if a CAP water recharge well was connected to the saturated zone of an aquifer in proximity to a drinking water well.

From an aquifer biological contamination standpoint, recharge of reclaimed water is also a concern. Reclaimed water class A+, A, B+ and B, which are typically the classes used for recharge, The disinfection requirement for Class A+ reclaimed water, highest quality of reclaimed water, is specified in the AAC as follows:

"R18-11-303. Class A+ Reclaimed Water

...

B. An owner of a facility shall ensure that:

1. The turbidity of Class A+ reclaimed water at a point in the wastewater treatment process after filtration and immediately before disinfection complies with the following:
 - a. The 24-hour average turbidity of filtered effluent is two NTUs or less, and
 - b. The turbidity of filtered effluent does not exceed five NTUs at any time.
2. Class A+ reclaimed water meets the following criteria after disinfection treatment and before discharge to a reclaimed water distribution system:
 - a. There are no detectable fecal coliform organisms in four of the last seven daily reclaimed water samples taken, and
 - b. The single sample maximum concentration of fecal coliform organisms in a reclaimed water sample is less than 23 / 100 ml.
 - c. If alternative treatment processes or alternative turbidity criteria are used, or reclaimed water is blended with other water to produce Class A+ reclaimed water under subsection

(C), there are no detectable enteric virus in four of the last seven monthly reclaimed water samples taken.
...”

As shown above, AAC R18-11-303 allows for the discharge of reclaimed water that might not be properly treated (i.e. improperly filtered or disinfected) at all times. A second concern is that reclaimed water is not treated sufficiently to reduce the concentrations of Cryptosporidium or Giardia lamblia in sewage to surface water concentrations. Refer to Table 2-1 in the “Expert Final Panel Report: Evaluation of the Feasibility of Developing Uniform Water Recycling Criteria for Direct Potable Reuse”, Prepared August 2016 by the National Water Research Institute for the State Water Resources Control Board, Sacramento, CA for a summary of biological pathogen concentrations in sewage.

The level of removal or inactivation required to reduce the Cryptosporidium concentration found in sewage to a concentration equivalent to a Bin 4 surface water would require an approximate reduction in concentration from 104 to 3 oocysts/L. This is an approximate 4-log reduction of Cryptosporidium.

The vast majority wastewater treatment facilities in Arizona typically employ a non-membrane filtration process which can achieve up to a 2-log reduction of Cryptosporidium. However, these facilities’ other treatment processes, such as chlorine disinfection, do not provide any additional reduction of Cryptosporidium by either removal or inactivation.

Other potential non-APP recharge activities may include the recharge of remediated water produced by superfund sites or recharge of stormwater.

All of the recharge activities described above are a concern when they are closely-coupled to a drinking water well.

Also, there is no assurance that an aquifer is of drinking water quality at any particular point in time. The water quality of an aquifer is a moving target.

AAC R18-11-405 states:

“R18-11-405. Narrative Aquifer Water Quality Standards

- A. A discharge shall not cause a pollutant to be present in an aquifer classified for a drinking water protected use in a concentration which endangers human health.

...”

However, this rule only applies to discharges that occur under an Aquifer Protection Permit and for aquifers declared as ‘drinking water protected’ aquifers. It does not apply to other types of discharges to aquifers.

There is also a problem with some of the water quality standards listed in AAC R18-11-406, “Numeric Aquifer Water Quality Standards: Drinking Water Protected Use” not matching drinking water standards. For example, the limit for Trihalomethanes is listed as 0.10 mg/L whereas the National Primary Drinking Water Standards limit is 0.08 mg/L

Lastly, the historic assumption is that aquifer water quality changes very slowly over time. The advent of closely-coupled recharge and subsequent drinking water recovery activities negates this assumption as changes can happen quickly. Although most contaminants are chronic rather than acute risks, this cannot be said of biological contaminants. Pathogens are acute risks with immediate illness or death possible.

Recommendation(s):

1. Review the new Source Approval process to include testing for the following pathogens:

- a. Cryptosporidium
- b. Giardia lamblia
- c. Legionella
- d. Viruses (enteric)

Testing for Total or Fecal Coliform (or E. coli or Heterotrophic Plate Counts) does not indicate if Cryptosporidium, Giardia lamblia, Legionella, or viruses are present in groundwater.

2. Implement continuous biological surveillance and testing methodology for pathogens in groundwater. Although this is currently being performed for Total/Fecal coliform testing on a re-occurring basis it is not being performed to determine if Cryptosporidium, Giardia lamblia, Legionella, or viruses are present. A protocol specifying testing frequency, monitoring and reporting requirements and other actions will need to be put in place.
3. Include as part of every well's sanitary survey inspection surveillance monitoring requirements for new recharge sources located in close proximity to a drinking water well. Close proximity will have to be defined in some manner as noted discussed above. If a new recharge source is encountered then a source assessment/analysis or source approval should be undertaken to validate that the drinking water well is not being negatively impacted.
4. Provide some recommendations for monitoring of private wells for contaminants. Although not regulated guidance should be given to a private well owner as part of an overall public health initiative.

-- Issue #2: R18-5-502(D).2 is very questionable when it comes to proper design criteria and what is actually being looked at during plan reviews. The 100' separation distance between a drinking water well and a septic system is a significant concern even if both the septic system and the well are properly constructed. How is a 100' separation distance protective for all types of geological structures (e.g. a karst, fractured bedrock, etc. geological formation)? See Chapters 2 and 3 of the EPA's "Source Assessment Guidance Manual" reference document for specific concerns and case histories.

The following concerns with the existing plan review and approval methodology are raised:

- How is a closely coupled drinking water well/septic system configuration being monitored to ensure that contamination does not occur over time?
- Do the existing 100' separation distance rule and the plan review methodology actually address the identified concerns? Or, is the existing rule and methodology just a historic antiquated curiosity without any real technical basis?

Recommendation(s):

1. Re-examine the 100' separation distance rule and incorporate a formal methodology into rule for addressing differing geological structures. Perhaps dye testing or some other form of testing can be performed to validate that the drinking water well and septic tank are not closely coupled?
2. Implement the continuous biological surveillance and testing methodology as detailed in Issue #1's recommendations.

3. Implement sanitary survey inspection surveillance monitoring requirements for new recharge sources located in close proximity to a drinking water well as detailed in Issue #1's recommendations.

-- Issue #3: All of the separation distances listed in R18-5-502(D) should be re-examined.

The use of a fixed separation distance approach for determining protection of drinking water wells likely inappropriate. In particular APP discharges (R18-5-502(D).3), underground storage tanks (R18-5-502(D).4) and hazardous waste facilities (R18-5-502(D).5) pose a higher risk to a PWS.

As per Issues #1 and #2, any recharge activity to the saturated zone of an aquifer negatively impacting a drinking water well due to biologically active or contaminated recharge water, or contamination due to geological impacts (e.g. leaching contaminants from underground geological structures due to pH, corrosivity issues, etc.) caused by the recharged water.

Likewise, proximity to a high risk contaminant source such as an underground storage tank or hazardous waste facility poses a significant risk.

Using a fixed separation distance criteria is probably one of the most significant problems with the existing design criteria and rules and needs to be re-examined in totality.

Recommendation(s):

1. Issues #1 and #2 recommendations, respectively, address separation distances for a drinking well from a recharge activity location and septic system.
2. A risk assessment technique should be utilized to determine the appropriate separation distance of a drinking water well from an underground storage tank or hazardous waste facility. Typically this takes the form of a Hazard and Operability Analysis (HAZOP) analysis or some other similar type of analysis.

Response 10(e): ADEQ appreciates the comments. While ADEQ believes its current rules adequately protect human health and the environment, ADEQ will take the comments under advisement during any potential future rulemakings addressing the rules in 18 A.A.C. 5, Article 5.

Criticism 11(a): Issues with Bulletin 10. This is old and out of date. This needs to be updated or dropped from the rules. A few things have changed in Water in AZ in 42-years.

Response 11(a): ADEQ appreciates the comment. While ADEQ believes its current rules adequately protect human health and the environment, ADEQ will take the comment under advisement during any potential future rulemakings addressing the rules in 18 A.A.C. 5, Article 5.

Criticism 11(b): Clarifications are needed with regard to repair/rehab vs new construction. I have seen owners split up jobs to ensure they can avoid permits, engineering and permit fees.

Response 11(b): ADEQ appreciates the comment. In reviewing applications for Approval to Construct (ATC), ADEQ has consistently relied on the concept of "like for like". Pursuant to A.A.C. R18-5-505(B), an ATC is required when constructing a new

public water system, modifying an existing facility, including an extension to an existing public water system, or making an alteration that will affect the treatment, capacity, water quality, flow, distribution, or operational performance of a public water system. If none of those elements are affected, it is likely that an ATC is not required.

Criticism 12: While commenter supports changes to the minimum design criteria for public water systems found in A.A.C. R18-5-502 to better reflect current materials and system designs, Commenter requests that ADEQ ensure that such revisions do not place an undue burden on smaller public water systems.

Response 12: ADEQ appreciates the comment. While ADEQ believes its current rules adequately protect human health and the environment, ADEQ will take the comment under advisement during any potential future rulemakings addressing the rules in 18 A.A.C. 5, Article 5. ADEQ remains committed to minimizing the regulatory burden faced by small public water systems (PWSs) in Arizona.

Criticism 13: Add the CAPITALIZED SECTION to R18-5-502(C)(1)(a): A water main shall not be placed:

a. Within 6 feet, horizontal distance, and LESS THAN below 2 feet, vertical distance, above the top of a sewer main unless extra protection is provided. Extra protection shall consist of constructing the sewer main with mechanical joint ductile iron pipe or with slip-joint ductile iron pipe if joint restraint is provided.

Alternate extra protection shall consist of encasing both the water and sewer mains in at least 6 inches of concrete for at least 10 feet beyond the area covered by this subsection (C)(1)(a).

Response 13: ADEQ appreciates the comment. While ADEQ believes its current rules adequately protect human health and the environment, ADEQ agrees that increased clarity would benefit those relying on the rules. ADEQ will take the comment under advisement during any potential future rulemakings addressing the rules in 18 A.A.C. 5, Article 5.

Criticism 14(a):

1. Specify fire flow regulations in existing water systems and which state agency is responsible for establishing minimum requirements.
2. Include the addition of an exemption or new section for replacement of aging infrastructure in water systems that were designed and constructed for lower fire flow requirements or in some cases no fire flow requirement.
3. Clarify the meaning of "all conditions of flow".

Response 14(a): ADEQ appreciates the comment. While ADEQ believes its current rules adequately protect human health and the environment, ADEQ agrees that increased clarity would benefit those relying on the rules. ADEQ will take the comment under advisement during any potential future rulemakings addressing the rules in 18 A.A.C. 5, Article 5. Generally, ADEQ's regulatory authority relates to drinking water quality, not capacity. In terms of addressing fire flow, ADEQ's regulatory review is limited to ensuring minimum pressure requirements are met and the integrity of potable water systems is maintained. Adequate fire flow capacity falls under the jurisdiction of local fire authorities. If a particular PWS cannot ensure the minimum pressure of 20 psi with fire flow calculated into the equation, then the fire authority should not rely on the PWS for its water supply. There should be an alternate

source for fire protection (e.g. separate storage capacity). If a PWS is not able to meet fire flow requirements while maintaining minimum pressure, then it is possible they should be deemed as not providing fire flow.

Criticism 14(b): Clarify the separation requirements for water and sewer.

Response 14(b): ADEQ appreciates the comments. While ADEQ believes its current rules adequately protect human health and the environment, ADEQ will take the comments under advisement during any potential future rulemakings addressing the rules in 18 A.A.C. 5, Article 5.

Criticism 14(c):

1. Clarify and broaden the list of approved pipe and service lateral materials that are available for use in water systems. Previous discussions between ADEQ engineering review and commenter's engineering team have indicated ADEQ's desire to eliminate copper for use on service laterals. Commenter is not in support of eliminating copper.
2. Provide additional consistency between the guidance documents and the Minimum Design Criteria rules established in the Arizona Administrative Code.

Response 14(c): ADEQ appreciates the comment. ADEQ does not intend to eliminate use of copper. However, water systems must understand their water quality parameters (e.g. pH) and how they could affect copper levels in the water served to their customers. If the copper line has an internal epoxy coating or other protection, it could potentially mitigate copper issues in the future.

Criticism 15(a): Page 26 – R18-5-502. Section A - A public water system ... “issued by the Arizona Department of Health Services, May 1978 (and no further additions) ... have been designed using good engineering practices.” Verify “no further additions” is correct vs “or current version”.

Response 15(a): ADEQ appreciates the comment. Pursuant to A.R.S. 41-1028(B), ADEQ is required to "state that [any material incorporated by reference] does not include any later amendments or editions of the incorporated matter."

Criticism 15(b): Page 26 – R18-5-502. Section C.1.a. - Within 6 feet, horizontal distance, and below 2 feet, vertical distance, above the top of a sewer main unless extra protection is provided.

Option 1: Suggest changing below to “within”.

Option 2: Re-word entire section: Within 6 feet, horizontal distance, or 2 feet, vertical distance above, or any distance below a sewer main, extra protection is required.

Page 26 – R18-5-502. Section C.1.b. - Extra protection shall consist of constructing the sewer main with mechanical joint ductile iron pipe or with slip-joint ductile iron pipe if joint restraint is provided. Alternate extra protection shall consist of encasing both the water and sewer mains in at least 6 inches of concrete for at least 10 feet beyond the area covered by this subsection (C)(1)(a).

& Section C.6 - Requests for authorization to use alternate construction techniques, materials, and joints shall be reviewed by the Department, and such requests may be approved on a case-by-case basis.

	<p>Ductile Iron sewer main with internal lining has been failing. There are other techniques available to protect water near sewer crossing locations. Cured In Place sewer pipe (no joints), utilizing casing pipes. Clarify and update to provide options consistently approved are not required to be evaluated on a case by case basis.</p> <p>Page 26 – R18-5-502. Section C.1.b. - Within 2 feet horizontally and 2 feet below the sewer main. Specify gravity fed for this section (Section C.3. states force mains or pressure sewers require 6 feet horizontal separation).</p> <p>Page 26 – R18-5-502. Section C.2. Clarify minimum horizontal; separation from manhole needs to be 6 feet, but Section C.1.a. says 2 feet horizontal from the sewer line. These are contradictory.</p> <p><u>Response 15(b)</u>: ADEQ appreciates the comment. While ADEQ believes its current rules adequately protect human health and the environment, ADEQ agrees that increased clarity would benefit those relying on the rules. ADEQ will take the comment under advisement during any potential future rulemakings addressing the rules in 18 A.A.C. 5, Article 5.</p>
<p>R18-5-503</p>	<p><u>Criticism 1</u>: R18-5-503 Storage Requirements. Should minimum required storage include a fire flow component?</p> <p><u>Response 1</u>: ADEQ appreciates the comment. While ADEQ believes its current rules adequately protect human health and the environment, ADEQ will take this idea under advisement during any potential future rulemakings addressing the rules in 18 A.A.C. 5, Article 5. However, excessive storage capacity may lead to stagnant water and deterioration of water quality. Given that many PWSs in Arizona already struggle to meet the minimum fire flow requirements of the local fire authorities, an additional state regulation might be overly burdensome. In the alternative, if there is separate storage for fire flow, then the stagnant water concern is less of an issue.</p> <p><u>Criticism 2</u>: Issue: The minimum storage capacity requirement makes no allowance for a reserved storage volume to address firewater flow. For example, a typical residential fire flow rate is 1,500 gpm x 1 hour = 90,000 gallons. A typical commercial fire flow rate is 3,000 gpm x 1 hour = 180,000 gallons. Reserve storage capacity for fire flow is a major concern for small PWSs or PWSs located in rural settings. Recommendation(s): Incorporate a reserve volume requirement in rule to address fire flows. Please refer to the following document for rule development guidance to address fire flows: “Evaluation of Fire Flow Methodologies”, NFPA - The Fire Protection Research Foundation, January 2014 Perhaps this recommendation can be implemented as a Substantive Policy Statement by the ADEQ instead of a rule change.</p> <p><u>Response 2</u>: See Response 1.</p> <p><u>Criticism 3</u>: Clarify and update the minimum storage requirement. Under the current rules it is possible for a water system to have zero storage.</p>

	<p><u>Response 3:</u> ADEQ appreciates the comment. While ADEQ believes its current rules adequately protect human health and the environment, to clarify, transient non-community systems are not required to have storage because they can shut down when necessary. However, that scenario would not apply to systems with residential users. Per A.A.C. R18-5-503(B), "[t]he minimum storage capacity for a multiple-well system for a CWS or a noncommunity water system that serves a residential population or a school may be reduced by the amount of the total daily production capacity minus the production from the largest producing well."</p>
<p>R18-5-505</p>	<p><u>Criticism 1:</u> R18-5-505(B). Approval to Construct - Rule Conflict: "A person shall not start to construct a new public water system, modify an existing facility, including an extension to an existing public water system, or make an alteration that will affect the treatment, capacity, water quality, flow, distribution, or operational performance of a public water system before receiving an Approval to Construct from the Department."</p> <p>However, the ATC application requires full analyses of a proposed new source of water that includes microbiological; physical; radiochemical; inorganic, organic, and volatile organic chemical parameters (R18-5-505(B)(1)(d)).</p> <p>For a groundwater source, this entails that a new well be drilled/constructed which is in conflict/violation of R18-5-505(B), "[a] person shall not start to construct a new public water system..."</p> <p>Recommendation: Make approval of the water quality/source a separate/standalone approval - perhaps required prior to or during the AOC process.</p> <p>R18-5-505(B)(3): An existing public water system shall be exempt from the plan review requirements of this Article if the public water system is in compliance with this Chapter or is making satisfactory progress towards compliance under a schedule approved by the Department if the applicable structural revision, addition, extension, or modification:</p> <ul style="list-style-type: none"> a. Has a project cost of \$12,500 or less; or b. Is made to a water line that: <ul style="list-style-type: none"> i. Is not for a subdivision requiring plat approval by a city, town, or county; ii. Has a project cost of more than \$12,500 but less than \$50,000; and iii. Has a design that is sealed and signed by a professional engineer registered in Arizona and the construction of which is reviewed for conformance with the design by a professional engineer registered in Arizona. <p>In today's dollars virtually no system projects can be completed for less than \$12,500.</p> <p>Recommendation - Increase project costs to \$100,000 (\$100,000 - \$250,000 for main water lines)</p> <p><u>Response 1:</u> ADEQ appreciates the comments. Pursuant to A.A.C. R18-5-505(B), Approvals to Construct (AOC) are only required when the well is equipped to distribute water for potable use. A person may test and/or operate a well without an AOC as long as they are not serving the water for potable use.</p>

Additionally, ADEQ will take commenter's recommendations related to project cost limits to qualify for design review exemptions under advisement during any potential future rulemakings addressing the rules in 18 A.A.C. 5, Article 5.

Criticism 2: Under R18-5-505 "Approval to Construct", Section B.3.a. the \$12,500 amount set in 2005 needs to be adjusted for inflation in order to reflect current construction costs. Using an annual inflation rate of 3% a value \$19,500 would be more appropriate. Similarly, the values under Section B.3.b.ii. should be inflation adjusted to at least \$19,500 and \$77,900 respectively.

Response 2: ADEQ appreciates the comment. ADEQ will take commenter's recommendations related to project cost limits to qualify for design review exemptions under advisement during any potential future rulemakings addressing the rules in 18 A.A.C. 5, Article 5.

Criticism 3: I believe you should consider updating R18-5-505(B)(3) to include adjusted project costs. I believe the intent is to have small projects not go through the plan review process. With inflation, the limits in the rule aren't reasonable.

Response 3: ADEQ appreciates the comment. ADEQ will take commenter's recommendations related to project cost limits to qualify for design review exemptions under advisement during any potential future rulemakings addressing the rules in 18 A.A.C. 5, Article 5.

Criticism 4: R18-5-505.B.4 - this section states that "Upon completion of a project...the public water system shall submit a notice of compliance which contains: (a) a fair market value cost estimate for the project." Question: if the project is complete, then there is an ACTUAL cost for the project. Wouldn't it be better to provide the actual cost versus an estimate, especially at the completion of a project? What good does the estimate do? Part (b) of this section states to provide the name of the design engineer and the review engineer. What is the "review engineer"? Lastly, the first sentence above states that the water system shall submit a notice of compliance. Is that simply a letter that contains the items in (a), (b) and (c)?

In R18-5-505, the act of obtaining an exemption is equally burdensome as obtaining an ATC. It seems that the same documents must be submitted to the Department to obtain an exemption as to obtain an ATC. Seems that an exemption should be significantly less burdensome.

Response 4: ADEQ appreciates the comments. ADEQ agrees that increased clarity would benefit those relying on the exemption rules. ADEQ will take the comment related to language clarify under advisement during any potential future rulemakings addressing the rules in 18 A.A.C. 5, Article 5.

However, ADEQ does not believe the design review exemption process is overly burdensome, especially given the cost savings available to those who obtain exemptions.

Criticism 5: Clarify and cleaning up the explanation of the \$12.5k vs \$50k. Seems that some project owners try to skirt rules by splitting up jobs into weird smaller versions to avoid permits, engineering and permit fees. It would also help if ADEQ and

commenter have a similar “process” in enforcing/implementing this part of the rule. Both agencies interpret differently and require differences in submittals, notifications, when, where, etc.

Response 5: ADEQ appreciates the comments. ADEQ agrees that increased clarity would benefit those relying on the exemption rules. ADEQ will take the comment under advisement during any potential future rulemakings addressing the rules in 18 A.A.C. 5, Article 5. ADEQ reminds those eligible for exemptions to follow the appropriate process to ensure that regulated projects are either properly reviewed or determined to be exempt from design review.

Criticism 6: The use of alternate forms for the Applications and Approvals should be discouraged. I would suggest just requiring the use of the ADEQ Department issued forms for consistency of the project submittals, reviews and certifications. I have seen the use of the ADEQ forms, the YCDS forms, home-made forms and various combinations of forms on submittals over the last 15 years. If other forms are allowed, then ADEQ should provide a specific list of Department “approved” forms that we could reference.

I am glad to see the requirement for the engineers to seal ALL the sheets in the record drawings. The old rule was not clear and we have seen only the cover sheet sealed with the as-built date, all the sheets sealed with as-built labels, some of the sheets sealed and some of the sheets marked with an AB designation on the plans, but not sealed. This rule change makes it very clear that all the sheets in the record drawings need to be sealed.

I also suggest that the construction cost limits for submittals be clearly identified as “Construction” costs for the project. R18-5-505. Paragraph B.2. does note “construction” cost, but the immediately following section 3.b. calls our “project cost”, hence the confusion. Adding “Construction” eliminates the potential costs for design, administration, observations, etc., from the calculation and clarifies that the dollar amounts are just for construction costs via the contractors bid/estimate.

R18-5-505. Approval to Construct, Section E.3. The three-year limit on completion of the construction “after the date construction begins” can be hard to define. If the three-year limit is tied to the date of issuance of the ATC, then that would clearly establish a construction completion date, similar to E.1.

Response 6: ADEQ appreciates the comments. For ease of processing and review of applications for Approval to Construct and Approval of Construction, ADEQ encourages the use of the Department created forms available on the ADEQ website at <https://www.azdeq.gov/forms>. Use of Department approved forms is required when submitting the Certificates of Completion required pursuant A.A.C. R18-5-507 and R18-5-508. ADEQ agrees that increased clarity would benefit those relying on the exemption rules. ADEQ will take the comment under advisement during any potential future rulemakings addressing the rules in 18 A.A.C. 5, Article 5.

Criticism 7: Commenter requests that ADEQ clarify the exemptions from the current ATC/AOC process (see A.A.C. R18-5-505(B)(2), (3), (4)) including the consideration of potential statutory changes to update the exemptions (see A.R.S. 49-353(A)(2)(e) & (f)) and create a more streamlined process for smaller projects.

	<p><u>Response 7:</u> ADEQ appreciates the comments. ADEQ agrees that increased clarity would benefit those relying on the exemption rules. ADEQ will take the comment under advisement during any potential future rulemakings addressing the rules in 18 A.A.C. 5, Article 5. ADEQ reminds those eligible for exemptions to follow the appropriate process to ensure that regulated projects are either properly reviewed or determined to be exempt from design review.</p>
<p>R18-5-508</p>	<p><u>Criticism 1:</u> R15-5-508(A) and (B) require a professional engineer registered in Arizona to prepare and seal record drawings. This may be inconsistent with current practice, R18-505 B, and Arizona Revised Statutes (A.R.S.) Chapter 1, Article 3, 32-152 as noted below:</p> <ul style="list-style-type: none"> a. Some agencies allow professional surveyors registered in Arizona to prepare and seal record drawings. b. Arizona Revised Statutes (A.R.S.) Chapter 1, Article 3, 32-152 allows a “registered or certified professional” to prepare record drawings. <p>It is suggested that the code be clarified to allow professional engineers or surveyors registered in Arizona to prepare and seal record drawings.</p> <p><u>Response 1:</u> ADEQ appreciated the comments. A.A.C. R18-5-505, R18-5-505, R18-5-507, and R18-5-508 all require a stamp from a professional engineer, not a surveyor. ADEQ agrees that increased clarity would benefit those relying on the rules. ADEQ will take the comment under advisement during any potential future rulemakings addressing the rules in 18 A.A.C. 5, Article 5.</p>

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

Article 1. Classification of Water and Wastewater Facilities and Certification of Operators

R18-5-101 was last amended in April 2005. ADEQ described probable economic impacts in qualitative and quantitative terms in the economic impact statement. ADEQ believes that the qualitative assessments of the economic impacts to the rule were accurate and any costs have been minor. ADEQ believes that the Article 1 rules’ impact on the state’s economy, small business and consumers has not changed and the only changes would be to adjust any dollar values for inflation.

Article 2. Public and Semipublic Swimming Pools and Spas

ADEQ described probable economic impacts in qualitative and quantitative terms in the economic impact statement prepared in 1998. ADEQ believes that the qualitative assessments of the economic impacts to the rules were accurate and any costs have been minor. ADEQ believes that the Article 2 rules’ impact on the state’s economy, small business and consumers has not changed since the effective date and the only changes would be to adjust any dollar values for inflation. For the past three years (2018-first quarter of 2021), ADEQ generally averaged 54 approvals a year for new construction or modification of public and semipublic swimming pools and spas. In the past five years, ADEQ has received and processed the following number of applications for public and semipublic swimming pools:

- 2017 - 33
- 2018 - 24
- 2019 - 41
- 2020 - 41

- 2021 - 24

Article 3. Water Quality Management Planning

ADEQ described probable economic impacts in qualitative terms in the economic impact statement prepared in 2000. ADEQ believes that the qualitative assessments of the economic impacts to the rules were accurate and any costs have been minor. ADEQ believes that the Article 3 rules' impact on the state's economy, small business and consumers has not changed since the effective date. In the past five years, ADEQ has received three 208 plan amendments (under R18-5-302), and 82 requests for determinations of conformance (under R18-5-303).

Article 4. Subdivisions

An economic impact statement was prepared when R18-5-406 and R18-5-407 were amended in 1990. ADEQ believes that this Article does not have a substantial economic impact or effect on the state's economy, small businesses or consumers. The primary economic impact of these rules is the cost of the time it takes a subdivider to go through the process for Approval of Certificate of Sanitary Facilities, and the benefit that incurs to the public by requiring adequate water, sewer, and waste disposal services to be in place before allowing the subdivider to offer lots or homes for sale. In the past five years, ADEQ has received and processed the following number of applications for Certificate of Approval for Sanitary Facilities:

- 2016– 27
- 2017 - 43
- 2018 - 53
- 2019 - 32
- 2020 - 52
- 2021 (first quarter) - 63

Article 5. Minimum Design Criteria

ADEQ described probable economic impacts in qualitative and quantitative terms in the economic impact statement prepared in 2002. ADEQ believes that this Article does not have a substantial economic impact or effect on the state's economy, small businesses or consumers. The primary economic impact of these rules is the cost of the time it takes the owner of a public water system to go through the design review process, and the benefit that incurs to the public by requiring public water systems are designed to minimum criteria. In the past five years, ADEQ has received and processed the following number of applications for Approvals to Construct:

- 2017 – 176,
- 2018 – 176,
- 2019 – 231,
- 2020 – 210, and
- 2021 – 62.

9. **Has the agency received any business competitiveness analyses of the rules?** Yes ___ No x

10. **Has the agency completed the course of action indicated in the agency's previous five-year-review report?**

Rule	Explanation
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<p>Article 2</p>	<p><u>2016 Proposed Course of Action:</u> In response to Executive Order 2015-01, paragraph 5, ADEQ submitted to the Office of the Governor an evaluation of its rules, with recommendations for which rules could be amended or repealed consistent with the priorities and principles set forth in the Order. In the September 1, 2015 Regulatory Review Report, ADEQ discusses that incorporating by reference a national standard for construction design would significantly reduce the number of rules.</p> <p>As the ADHS’ rules refer to some of these rules, ADEQ will need to coordinate with ADHS to ensure that its proposed repeals do not leave a gap in ADHS’s regulation of minimum standards for sanitary conditions at swimming pools. Also, as the vast majority of design review and approval of public and semipublic swimming pools and spas are in Maricopa and Pima Counties, ADEQ will need to coordinate with the delegated counties on how to transition regulatory oversight.</p> <p>ADEQ is reviewing its rulemaking priorities and plans to amend these rules within the next five years by repealing most of the sections and incorporating by reference current standards. ADEQ anticipates submitting a rulemaking to the Council by December 2020.</p> <p><u>Completed:</u> No.</p> <p><u>Explanation:</u> In 2017 ADEQ engaged in multiple discussions with the Arizona Department of Health Services (ADHS) and other regulatory entities including several counties, swimming pool operators, and swimming pool construction companies in an extensive effort at consultation with stakeholders. During that engagement there was a broad consensus among the stakeholders that, if there was to be an update to the rules, the best option was to mirror the standards and policies currently in place and enforced by Maricopa County. ADEQ’s interest in revising the rule is because many of the requirements are not directly in line with ADEQ’s mission, and may fit better in another department. During the discussions, it was determined that ADHS did not have the financial resources or technical capabilities required to assume and implement the full swimming pool program. ADEQ believes the current rule is not optimal for the following reasons:</p> <ul style="list-style-type: none"> • The program does not directly align with ADEQ’s missions • The program is split across two departments • The program is unfunded • Pool designs have evolved significantly since the standards were developed <p>Currently, ADEQ is researching the level of review of swimming pools conducted by county and city departments. Based on the rationale above, ADEQ may propose to let some swimming pool rules expire. Such a request would be submitted to Council and would likely utilize the new, statutory language to expire rules in A.R.S. § 41-1052(M).</p>
<p>R18-5-401</p>	<p><u>2016 Proposed Course of Action:</u> The definition of ‘condominium’, defined in rule by reference to a statutory definition, needs to be updated from A.R.S. § 33-551 et seq. to A.R.S. § 33-1201 et seq.</p> <p><u>Completed:</u> No.</p> <p><u>Explanation:</u> Due to the twelve-year moratorium on rulemaking, higher priority strategic planning and agency resource constraints, ADEQ has not engaged in this proposed rulemaking. In preparation for this Rule Review, ADEQ reviewed and reassessed the rule and the 2016 proposal and has determined that A.R.S. 33-551 et</p>

	<p>seq. was moved and now exists at A.R.S 33-1201 et. seq. Despite the incorrect citation ADEQ has not had an issue in administering the program due to the definition of ‘condominium’. ADEQ will update this rule contingent upon additional capacity through additional funding.</p>
R18-5-402	<p><u>2016 Proposed Course of Action:</u> The rule is effective in regards to the submission and review of pertinent subdivision plans, but could be more effective by including a more detailed description of the subdivision application and approval process.</p> <p><u>Completed:</u> No.</p> <p><u>Explanation:</u> Due to the twelve-year moratorium on rulemaking, higher priority strategic planning and agency resource constraints, ADEQ has not engaged in this proposed rulemaking. In preparation for this Rule Review, ADEQ reviewed and reassessed the rule and the 2016 proposal and has determined that the rule provides a sufficient amount of detail in the description of the subdivision application and approval process. Therefore, ADEQ does not intend to move forward with the previously proposed amendment.</p>
R18-5-403	<p><u>2016 Proposed Course of Action:</u> The text could be further clarified by providing a more detailed description of the subdivision application and approval process.</p> <p><u>Completed:</u> No.</p> <p><u>Explanation:</u> See Response to R18-5-402 above.</p>
R18-5-406	<p><u>2016 Proposed Course of Action:</u> References to other rules are inconsistent. The proposed water system must comply with the minimum design standards that apply to public water systems that are prescribed in Title 18, Chapter 4, Article 5. However, ADEQ's Application for Sanitary Facilities for Subdivisions contains the correct reference to the Approval to Construct process of Title 18, Chapter 4, Article 5.</p> <p><u>Completed:</u> No.</p> <p><u>Explanation:</u> Due to the twelve-year moratorium on rulemaking, higher priority strategic planning and agency resource constraints, ADEQ has not engaged in this proposed rulemaking. In preparation for this Rule Review, ADEQ reviewed and reassessed the rule and the 2016 proposal and has determined that the rule would benefit from referencing the compliance requirement of proposed water systems to follow the applicable minimum design standards in Title 18, Chapter 4, Article 5. In the past five years, ADEQ has not received a criticism or comment on the omission of the reference and has not had an issue in administering the program due to the omission. Also, functionally, by the time an application is submitted, the Approval of Construction has been issued for the water system and the minimum design criteria has already been followed. ADEQ will update this rule contingent upon additional capacity through additional funding.</p>
R18-5-407	<p><u>2016 Proposed Course of Action:</u> References to other rules are inconsistent. The proposed public sewerage system must comply with the sewage system rules that are now prescribed in Title 18, Chapter 9, Article 2 and 3. However, ADEQ's Application for Sanitary Facilities for Subdivisions contains references to the correct rules, thereby addressing the inconsistencies.</p> <p><u>Completed:</u> No.</p>

	<p><u>Explanation:</u> Due to the twelve-year moratorium on rulemaking, higher priority strategic planning and agency resource constraints, ADEQ has not engaged in this proposed rulemaking. In preparation for this Rule Review, ADEQ reviewed and reassessed the rule and the 2016 proposal and has determined that the rule would benefit from referencing Title 18, Chapter 9, Article 2 and 3 instead of Title 18, Chapter 4, Article 8. In the past five years, ADEQ has not received a criticism or comment on the inaccurate reference and has not had an issue in administering the program in light of the inaccuracy. Also, functionally, by the time an application is submitted, the Approval of Construction has been issued for the water system and the correct rules have already been followed and applied. ADEQ will update this rule contingent upon additional capacity through additional funding.</p>
<p>R18-5-408</p>	<p><u>2016 Proposed Course of Action:</u> The proposed individual sewerage disposal system as described in subsections (B) through (E) must comply with the rules for on-site wastewater treatment facilities that are prescribed in Title 18, Chapter 9, Article 3. However, ADEQ's Application for Sanitary Facilities for Subdivisions contains references to the correct rules, thereby addressing the inconsistencies.</p> <p><u>Completed:</u> No.</p> <p><u>Explanation:</u> Due to the twelve-year moratorium on rulemaking, higher priority strategic planning and agency resource constraints, ADEQ has not engaged in this proposed rulemaking. In preparation for this Rule Review, ADEQ reviewed and reassessed the rule and the 2016 proposal. R18-5-408 (B) through (E) discusses the site investigation requirements which are detailed in Title 18, Chapter 9 Article 3. However, the subdivision rules do not tie the requirements to Title 18, Chapter 9, Article 3 for the site investigation (i.e. perc tests and boring logs). Additionally, the site investigation requirements require that two perc tests be conducted at the primary location of the disposal system and one in the reserve area. Tying the subdivision site investigation requirements will increase confusion as the rules in Title 18, Chapter 9, Article 3 are designed for a single onsite system not subdivision lots. Therefore, each lot would require a minimum of three perc tests (2 in the primary and one in the reserve) thereby potentially increasing the burden. At the time of this Rule Review, ADEQ is going through rule updates and may ultimately make changes to this article which may impact the site investigation rules. Such changes would have to occur first before ADEQ would tie the subdivision site investigation requirements to Title 18, Chapter 9, Article 3. ADEQ will update this rule contingent upon additional capacity through additional funding.</p>
<p>R18-5-409</p>	<p><u>2016 Proposed Course of Action:</u> References to other rules are inconsistent, as the rules in A.A.C. Title 18, Chapter 8, Article 5 were recodified to A.A.C. Title 18, Chapter 13, Article 3, but the recodification is explained in the Historical Notes of A.A.C. Title 18, Chapter 8, Article 5</p> <p><u>Completed:</u> No.</p> <p><u>Explanation:</u> Due to the twelve-year moratorium on rulemaking, higher priority strategic planning and agency resource constraints, ADEQ has not engaged in this proposed rulemaking. In preparation for this Rule Review, ADEQ reviewed and reassessed the rule and the 2016 proposal and has determined that the rule would benefit from referencing A.A.C. Title 18, Chapter 13, Article 3 instead of A.A.C. Title 18, Chapter 8, Article 5. In the past five years, ADEQ has not received a criticism or comment on the inaccurate reference and has not had an issue in</p>

	<p>administering the program in light of the inaccuracy. At the moment, the subdivision approval process is unaffected by this as the garbage collection and disposal agreement is part of the subdivision application process. ADEQ will update this rule contingent upon additional capacity through additional funding.</p>
<p>R18-5-410</p>	<p><u>2016 Proposed Course of Action:</u> The reference to the Uniform Plumbing Code in R9-1-412(D) is inconsistent because this subsection does not exist. However, ADEQ has addressed inconsistencies in the Application for Sanitary Facilities for Subdivisions, which explains that the applicable building code governs.</p> <p><u>Completed:</u> No.</p> <p><u>Explanation:</u> Due to the twelve-year moratorium on rulemaking, higher priority strategic planning and agency resource constraints, ADEQ has not engaged in this proposed rulemaking. In preparation for this Rule Review, ADEQ reviewed and reassessed the rule and the 2016 proposal and has determined that the rule would benefit from referencing the current location of the Uniform Plumbing Code as opposed to the inaccurate reference. In the past five years, ADEQ has not received a criticism or comment on the inaccurate reference and has not had an issue in administering the program in light of the inaccuracy. At the moment, the program is unaffected by this inaccuracy. ADEQ will update this rule contingent upon additional capacity through additional funding.</p>
<p>R18-5-502</p>	<p><u>2016 Proposed Course of Action:</u> Overall, the rules are effective. In the previous Five-Year Review Report, ADEQ proposed amending all the rules in order to reflect current rulemaking style. Although basic design standards have not changed since the rules were adopted in 1995, ADEQ has been considering updating the minimum design criteria in R18-5-502, which incorporate by reference the 1979 Bulletin No. 10 as issued by the Arizona Department of Health Services. Since any future rulemaking would impact every public water system in the state, extensive stakeholder outreach would be required for this rulemaking. ADEQ would need approximately three years to accomplish this rulemaking, given reduced agency resources and assuming that the moratorium on rulemaking is not continued. ADEQ anticipates it would be able to submit a Notice of Final Rulemaking to the Council by July 2019.</p> <p><u>Completed:</u> No</p> <p><u>Explanation:</u> Since 2016, ADEQ’s Water Quality Division performed several water-related rulemakings, such as modifying various surface water quality standard rules in 18 A.A.C. 11, Article 1, modifying Aquifer Protection Permit (APP) rules to avoid conflicts and duplicative regulation between the federal Coal Combustion Residual regulations and the state APP regulations and statutes, updating and restructuring the reclaimed water rules, and allowing for treatment of reclaimed water for potable use. Concerning R18-5-502, in the summer of 2021, ADEQ requested an exemption from the rulemaking moratorium and was issued one on July 9, 2021. ADEQ has reviewed the article with industry and stakeholders and proposes to update the rule to reflect current industry standards and practices. Unfortunately, after the exemption memo and stakeholder outreach, ADEQ experienced key staff turnover regarding this rulemaking. As a result, the rulemaking has not progressed beyond the stakeholder outreach phase. However, ADEQ is currently filling the staff vacancy and plans to complete the rulemaking by June of 2023.</p>

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

Rules	Analysis
Article 1	The costs of Article 1 include small fees for new wastewater and drinking water facility operators and small renewal fees for existing operators. The benefits include compliance with Drinking Water Operator Certification requirements in federal law under the Safe Drinking Water Act and the maintenance of federal grant money to supporting the program. Furthermore, the rules fulfill a state law requirement to maintain a Wastewater Operator Certification Program (see A.R.S. § 49-243(N)(1)). Weighing the benefits and costs, ADEQ believes the benefits of the operator certification programs and the facility classification rules outweigh the costs. Ensuring safely operated public drinking water and wastewater systems by trained operators to protect against drinking water and sewage-related health issues is a high priority to Arizona.
Article 2	The costs of Article 2 include the applicant hiring a contractor, engineer or architect to draft the plans required in the application. The application review for this program is not subject to billable hours. The benefits include free review from ADEQ staff and engineers, as well as support. Another benefit is that Arizona public and semipublic pools and spas are ensured by this program to be in compliance with design standards meant to protect human health. Weighing the costs and benefits, ADEQ believes the benefits outweigh the inconvenience of the application process due to the fact that applicants are given engineering review, time and assistance free of charge. Furthermore, protection of human health through public and semipublic pools and spas is a state priority.
Article 3	The costs of Article 3 include stakeholder submission of a Certified Areawide Water Quality Management Plan by a designated water quality planning agency and the conformance of sewage treatment facilities to the Plan thereafter. The benefits include Arizona's conformance with the requirements of Section 208 of the Clean Water Act, maintaining primary enforcement authority or primacy over the Waters of the United States - Surface Water Program, maintaining funding through primacy and general protection against drinking water and sewage-related health issues. Weighing the costs and benefits, ADEQ believes the benefits of the Water Quality Management Planning rules in Article 3 outweigh the costs because any alternative would risk becoming out of compliance with the Clean Water Act, losing primacy over the Waters of the United States - Surface Water Program (and program funding) and putting the safeguards against drinking water and sewage-related health issues in Arizona into jeopardy.
Article 4	The costs of Article 4 include developers applying for a health certificate verifying that sanitary facilities (water, waste, garbage) are being established in the prospective subdivision, as well as submission of a final plat showing that the plan for sanitary facilities matches the amount of lots. The benefits include assurance for the developers and prospective home buyers that sanitary facilities are being established in their subdivision and human health and the environment is protected. Weighing the costs and benefits, ADEQ believes the benefits outweigh the costs due to the relatively low costs and time spent for applicants in the application process and the

	state's priority to ensure responsible developing and human health and the environment.
Article 5	The costs of Article 5 include time spent in the application process through paperwork and application meetings with ADEQ staff, as well as compliance with industry standard minimum design criteria. The benefits include the assurance that drinking water systems are built to a standard that is protective of human health. Weighing the costs and benefits, ADEQ believes the benefits outweigh the costs due to the relatively low costs and time spent for applicants in the application process and the fact that the minimum design criteria are required by federal law and are standard industry practice. It is also the state's priority to ensure drinking water quality and human health.

12. **Are the rules more stringent than corresponding federal laws?** Yes __ No x

Article 1. Classification of Water and Wastewater Facilities and Certification of Operators

Article 1 does not have a corresponding federal law, but the rules are consistent with the federal incentive created by 42 U.S.C. 300j-12(a)(1)(ii), which states that the U.S. Environmental Protection Agency will withhold 20 percent of each state's capitalization grant unless that state has met the requirements of 42 U.S.C. § 300g-8, relating to operator certification for drinking water systems.

Article 2. Public and Semipublic Swimming Pools and Spas

Article 2 does not have a corresponding federal law.

Article 3. Water Quality Management Planning

Article 3 is not more stringent than Section 208 of the Federal Water Pollution Control Act, which mandates the creation of regional water quality plans, known as Certified Areawide Water Quality Management Plans, or 208 Plans.

Article 4. Subdivisions

Article 4 does not have a corresponding federal law.

Article 5. Minimum Design Criteria

Article 5 does not have a corresponding federal law.

13. **For rules adopted after July 29, 2010 that require the issuance of a regulatory permit, license, or agency authorization, whether the rules are in compliance with the general permit requirements of A.R.S. § 41-1037 or explain why the agency believes an exception applies:**

Article 1. Classification of Water and Wastewater Facilities and Certification of Operators

The rules were amended before July 29, 2010. A.R.S. §§ 49-352 and 49-361 require ADEQ to certify operating personnel according to their skill, knowledge and experience. However, the operator certification rules are similar to the definition of a general permit; the applicant is issued

the certification if the applicant meets the applicable requirements of the certification, there is no individual or traditional certification, and no public hearing is required.

Article 2. Public and Semipublic Swimming Pools and Spas

The rules were amended before July 29, 2010. The rules govern the procedures and requirements for ADEQ to issue a design approval and an approval of construction, which are similar to the definition of a general permit. Approval is granted if the applicant meets the applicable requirements of the rules, and no public hearing is required.

Article 3. Water Quality Management Planning

The rules were amended before July 29, 2010.

Article 4. Subdivisions

The rules were amended before July 29, 2010. However, subdivision approval is similar to the definition of a general permit; the applicant is issued the approval if the applicant meets the applicable requirements of the rule, and no public hearing is required.

Article 5. Minimum Design Criteria

The rules were amended before July 29, 2010.

14. Proposed course of action

ADEQ's rules, as they exist now, generally provide the necessary information for the regulated community.

In an effort to research whether any or all of Article 2. Public and Semipublic Swimming Pools and Spas could be expired, ADEQ reached out to ADHS, Arizona counties and Arizona cities to assess if their codes would be sufficient. The research revealed that some of ADHS's rules on the subject overlap with the rules in 18 AAC 5, Art. 2. It was further discovered that some of the county and city code covers what is in 18 AAC 5, Art. 2, but is inconsistent from county to county or city to city. Overall, ADEQ revealed that the prospect of expiring some or all of 18 AAC 5, Art. 2 will be more involved than originally thought in order to do so responsibly. ADEQ plans to regroup with ADHS, cities, counties and stakeholders after this 5YRR to reassess which, if any, rules could be expired. ADEQ plans to have a path forward determined with the relevant entities by January 2023.

Concerning the proposed rulemaking involving 18 AAC 5, Article 5, ADEQ plans to complete the rulemaking by June of 2023. For the inconsistent or outdated references identified in paragraphs 3, 6 and 10 above, the Department anticipates completing an expedited rulemaking by December of 2022, contingent upon exemption memo approval. Please note that agency resource constraints have limited the Department's capacity to conduct rulemaking that is not critical.

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 5. DEPARTMENT OF ENVIRONMENTAL QUALITY
ENVIRONMENTAL REVIEWS AND CERTIFICATION**ARTICLE 1. CLASSIFICATION OF WATER AND
WASTEWATER FACILITIES AND CERTIFICATION OF
OPERATORS**

Article 1, consisting of Sections R18-5-101 through R18-5-115, recodified from R18-4-101 through R18-4-115 (Supp. 95-2).

Article 5 renumbered as Article 1 consisting of Sections R18-4-101 through R18-4-115, effective October 23, 1987.

Former Sections R9-20-504 through R9-20-512, R9-20-517, R9-20-519, and R9-20-520 amended and renumbered as Article 5 consisting of Sections R9-20-501, R9-20-503 through R9-20-510, R9-20-512, R9-20-514, and R9-20-515; and new Sections R9-20-502, R9-20-511, and R9-20-513 adopted effective October 23, 1987.

Former Sections R9-20-501 through R9-20-503, R9-20-513 through R9-20-516, and R9-20-518 repealed effective October 23, 1987.

Section

R18-5-101.	Definitions
R18-5-102.	Applicability
R18-5-103.	Certification Committee
R18-5-104.	General Requirements
R18-5-105.	Certification
R18-5-106.	Examinations
R18-5-107.	Certificate Renewal
R18-5-108.	Certificate Expiration
R18-5-109.	Denial, Suspension, Probation, and Revocation
R18-5-110.	Reciprocity
R18-5-111.	Repealed
R18-5-112.	Experience and Education
R18-5-113.	Classes of Facilities
R18-5-114.	Grades of Wastewater Treatment Plants and Collection Systems
R18-5-115.	Grades of Water Treatment Plants and Distribution Systems
R18-5-116.	Initial Grading and Regrading of Facilities

**ARTICLE 2. PUBLIC AND SEMIPUBLIC SWIMMING
POOLS AND SPAS**

Article 2, consisting of Sections R18-5-201 through R18-5-251 and Illustrations A and B, adopted effective February 19, 1998 (Supp. 98-1).

Section

R18-5-201.	Definitions
R18-5-202.	Applicability
R18-5-203.	Design Approval
R18-5-204.	Approval of Construction
R18-5-205.	Prohibitions
R18-5-206.	Water Source
R18-5-207.	Construction Materials
R18-5-208.	Maximum Bathing Load
R18-5-209.	Shape
R18-5-210.	Walls
R18-5-211.	Freeboard
R18-5-212.	Floors
R18-5-213.	Entries and Exits
R18-5-214.	Steps
R18-5-215.	Ladders
R18-5-216.	Recessed Treads

R18-5-217.	Decks and Deck Equipment
R18-5-218.	Lighting
R18-5-219.	Water Depths
R18-5-220.	Depth Markers
R18-5-221.	Diving Areas and Equipment
R18-5-222.	Prohibition Against Diving; Warning Signs
R18-5-223.	Water Circulation System
R18-5-224.	Piping and Fittings
R18-5-225.	Pumps and Motors
R18-5-226.	Drains and Suction Outlets
R18-5-227.	Filters
R18-5-228.	Return Inlets
R18-5-229.	Gauges
R18-5-230.	Flow Meter
R18-5-231.	Strainers
R18-5-232.	Overflow Collection Systems
R18-5-233.	Vacuum Cleaning Systems
R18-5-234.	Disinfection
R18-5-235.	Cross-Connection Control
R18-5-236.	Wastewater Disposal
R18-5-237.	Lifeguard Chairs
R18-5-238.	Lifesaving and Safety Equipment
R18-5-239.	Rope and Float Lines
R18-5-240.	Barriers
R18-5-241.	Public Swimming Pools; Bathhouses and Dressing Rooms
R18-5-242.	Semipublic Swimming Pools; Toilets and Lavatories
R18-5-243.	Drinking Water Fountains
R18-5-244.	Wading Pools
R18-5-245.	Timers for Public and Semipublic Spas
R18-5-246.	Air Blower and Air Induction Systems for Public and Semipublic Spas
R18-5-247.	Water Temperature in Public and Semipublic Spas
R18-5-248.	Special Use Pools
R18-5-249.	Variances
R18-5-250.	Inspections
R18-5-251.	Enforcement
III. A.	Diving Well Dimensions for Swimming Pools
III. B.	Minimum Distance Requirements for Decks

**ARTICLE 3. WATER QUALITY MANAGEMENT
PLANNING**

Article 3, consisting of Sections R18-5-301 through R18-5-303, adopted by final rulemaking at 7 A.A.R. 559, effective January 2, 2001 (Supp. 01-1).

Section

R18-5-301.	Definitions
R18-5-302.	Certified Areawide Water Quality Management Plan Approval
R18-5-303.	Determination of Conformance

ARTICLE 4. SUBDIVISIONS

Former Title 9, Chapter 8, Article 11, consisting of Sections R9-8-1011 through R9-8-1015, R9-8-1021, R9-8-1026, R9-8-1027, R9-8-1031, and R9-8-1032 through R9-8-1036 renumbered as Title 18, Chapter 5, Article 4, consisting of Sections R18-5-401 through R18-5-411 (Supp. 89-2).

Section

R18-5-401.	Definitions
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R18-5-402.	Approval of plans required
R18-5-403.	Application for approval
R18-5-404.	Size of lots
R18-5-405.	Responsibility of subdivider
R18-5-406.	Public water systems
R18-5-407.	Public sewerage systems
R18-5-408.	Individual sewage disposal systems
R18-5-409.	Refuse disposal
R18-5-410.	Condominiums
R18-5-411.	Violations

ARTICLE 5. MINIMUM DESIGN CRITERIA

Article 5, consisting of R18-5-501 through R18-5-509, recodified from 18 A.A.C. 4, Article 5 at 10 A.A.R. 585, effective January 30, 2004 (Supp. 04-1).

Section

R18-5-501.	Siting Requirements
R18-5-502.	Minimum Design Criteria
R18-5-503.	Storage Requirements
R18-5-504.	Prohibition on the Use of Lead Pipe, Solder, and Flux
R18-5-505.	Approval to Construct
R18-5-506.	Compliance with Approved Plans
R18-5-507.	Approval of Construction
R18-5-508.	Record Drawings
R18-5-509.	Modification to Existing Treatment Process

ARTICLE 1. CLASSIFICATION OF WATER AND WASTEWATER FACILITIES AND CERTIFICATION OF OPERATORS

R18-5-101. Definitions

The terms in this Article have the following meanings:

“Certified operator” or “operator” means an individual who holds a current certificate issued by the Department in the field of water or wastewater treatment, water distribution, or wastewater collection.

“Collection system” means a pipeline or conduit, a pumping station, a force main, or any other device or appurtenance used to collect and conduct wastewater to a central point for treatment and disposal.

“Department” means the Department of Environmental Quality or its designated representative.

“Director” means the Director of the Department of Environmental Quality or the Director’s designated representative.

“Direct responsible charge” means day-to-day decision making responsibility for a facility or a major portion of a facility.

“Distribution system” means a pipeline, appurtenance, or device of a public water system that conducts water from a water source or treatment plant to consumers for domestic or potable use.

“Facility” means a water treatment plant, wastewater treatment plant, distribution system, or collection system.

“Industrial waste” means the liquid, gaseous, or solid waste produced at an industrial operation.

“Onsite operator” means an operator who visits a facility at least daily to ensure that the facility is operating properly.

“Onsite representative” means an individual located at a facility who monitors the daily operation at the facility and maintains contact with the remote operator regarding the facility.

“Operator” has the same meaning as certified operator, as defined in this Section.

“PDH” means professional development hour, as defined in this Section.

“Population equivalent” means the population that would contribute an equal amount of biochemical oxygen demand (BOD) computed on the basis of 0.17 pounds of five-day, 20-degree centigrade BOD per capita per day.

“Professional development hour” or “PDH” means one hour of participation in an organized educational activity related to engineering, biological or chemical sciences, a closely related technical or scientific discipline, or operations management.

“Public water system” has the same meaning prescribed in A.R.S. § 49-352.

“Qualifying discipline” means engineering, biology, chemistry, or a closely related technical or scientific discipline.

“Qualifying experience” means experience, skill, or knowledge obtained through employment that is applicable to the technical or operational control of all or part of a facility.

“Remote operator” means an operator who is not an onsite operator.

“Validated examination” means an examination that is approved by the Department after being reviewed to ensure that the examination is based on the class and grade of a system or facility.

“Wastewater” means sewage, industrial waste, and all other waterborne waste that may pollute any lands or waters of the state.

“Wastewater treatment plant” means a process, device, or structure used to treat or stabilize wastewater or industrial waste and dispose of the effluent.

“Water treatment plant” means a process, device, or structure used to improve the physical, chemical, or biological quality of the water in a public water system.

Historical Note

Former Section R9-20-504 repealed, new Section R9-20-504 adopted effective November 1, 1979 (Supp. 79-6).

Former Section R9-20-504 amended, renumbered as Section R9-20-501, then renumbered as Section R18-4-101 effective October 23, 1987 (Supp. 87-4). R18-5-101 recodified from R18-4-101 (Supp. 95-2). Amended by final rulemaking at 7 A.A.R. 1171, effective February 16, 2001 (Supp. 01-1). Amended by final rulemaking at 7 A.A.R. 5079, effective October 16, 2001 (Supp. 01-4). Amended by final rulemaking at 11 A.A.R. 998, effective April 2, 2005 (Supp. 05-1).

R18-5-102. Applicability

- A. The rules in this Article apply to owners and operators of facilities in Arizona.
- B. The following facilities are exempt from the requirements of this Article:
 1. A public water system that meets the nonapplicability criteria in R18-4-102.
 2. A septic tank or collection system that discharges to a septic tank.
 3. A collection system that serves 2,500 or fewer persons and discharges into a facility that is operated by a certified operator.

4. A collection system that serves a nonresident population and discharges into a collection system operated by a certified operator.
 5. An irrigation system, an industrial water facility, or a similar facility in which water is not used for domestic or drinking purposes.
 6. An irrigation or industrial wastewater facility used to treat, recycle, or impound industrial or agricultural wastes within the boundaries of the industrial or agricultural property.
 7. An industrial waste pretreatment facility in which treated wastewater is released to a collection system or wastewater treatment plant that is regulated by this Article.
 8. A facility for treating industrial wastes that are not treatable by biological means.
 9. A facility used to impound surface water before the water is conducted to a water treatment plant.
 10. A wastewater treatment device that serves a home.
- G. In the event of a vacancy caused by death, resignation, or removal for cause, the Director shall appoint a successor for the unexpired term.
 - H. A certification committee member may be reappointed, but a member shall not serve more than three consecutive terms.

Historical Note

Former Section R9-20-505 repealed, new Section R9-20-505 adopted effective November 1, 1979 (Supp. 79-6). Former Section R9-20-505 amended, renumbered as Section R9-20-503, then renumbered as Section R18-4-103 effective October 23, 1987 (Supp. 87-4). R18-5-103 recodified from R18-4-103 (Supp. 95-2). Amended by final rulemaking at 7 A.A.R. 1171, effective February 16, 2001 (Supp. 01-1).

R18-5-104. General Requirements**Historical Note**

Adopted as Section R9-20-502 and renumbered as Section R18-4-102 effective October 23, 1987 (Supp. 87-4). R18-5-102 recodified from R18-4-102 (Supp. 95-2). Amended by final rulemaking at 7 A.A.R. 1171, effective February 16, 2001 (Supp. 01-1). Amended by final rulemaking at 7 A.A.R. 5079, effective October 16, 2001 (Supp. 01-4).

R18-5-103. Certification Committee

- A. Upon the effective date of this rule, the Director shall establish a certification committee to make recommendations and to provide the Department with technical advice and assistance related to this Article when requested.
 - B. The certification committee shall consist of 11 members as follows:
 1. One employee of the Department;
 2. One currently employed wastewater treatment plant operator with Grade 4 certification;
 3. One currently employed water treatment plant operator with Grade 4 certification;
 4. One currently employed wastewater collection system operator with Grade 4 certification;
 5. One currently employed water distribution system operator with Grade 4 certification;
 6. One faculty member teaching sanitary sciences at an Arizona university or community college;
 7. One professional engineer, registered and residing in Arizona, engaged in consulting in the field of sanitary engineering;
 8. One elected or appointed municipal official;
 9. One representative of an investor-owned water or wastewater facility;
 10. One representative of a small public water system; and
 11. One currently employed remote operator representative.
 - C. The Director shall appoint each certification committee member.
 - D. The certification committee shall meet at least twice a year. At the first meeting of each calendar year, the certification committee shall select, from its membership, a chairperson and other officers as necessary. The Department's certification committee member is the executive secretary, who is responsible for keeping records of all meetings.
 - E. The term of a certification committee member is three years.
 - F. A meeting quorum consists of the chairperson or the chairperson's designated representative, the executive secretary or the executive secretary's designated representative, and three other members of the committee.
- A. A facility owner shall ensure that at all times:
 1. A facility has an operator in direct responsible charge who is certified for the class of the facility and at or above the grade of the facility;
 2. An operator makes all decisions about process control or system integrity regarding water quality or water quantity that affects public health; however, an administrator who is not a certified operator may make a planning decision regarding water quality or water quantity if the decision is not a direct operational process control or system integrity decision that affects public health;
 3. An operator who is in direct responsible charge of more than one facility is certified for the class of each facility and at or above the grade of the facility with the highest grade;
 4. An operator who replaces the operator in direct responsible charge does not begin operation of the facility before being certified for the applicable class and at or above the grade of the facility;
 5. In the absence of the operator in direct responsible charge, the operator in charge of the facility is certified for the applicable class of facility and at a grade no lower than one grade below the grade of the facility; and
 6. The names of all current operators are on file with the Department.
 - B. If the owner of a facility replaces an operator in direct responsible charge with another operator, the facility owner shall notify the Department in writing within 10 days of the replacement.
 - C. An operator shall notify the Department in writing within 10 days of the date the operator either ceases operation of a facility or commences operation of another facility.
 - D. An operator shall operate each facility in compliance with applicable state and federal law.
 - E. A facility owner shall ensure that a Grade 3 or Grade 4 facility has an onsite operator.
 - F. An operator holding certification in a particular class and grade may operate one or more Grade 1 or Grade 2 facilities as a remote operator if the facility owner ensures that the following requirements are met:
 1. The remote operator is certified for the class of each facility and at or above the grade of each facility operated by the remote operator.
 2. There is an onsite representative on the premises of each Grade 1 or Grade 2 facility, except for a Grade 1 water distribution system that serves fewer than 100 people, which is not required to have an onsite representative if the conditions of subsection (F)(8) are met. The onsite representative is not required to be an operator if the

- facility has a remote operator who is certified at or above the grade of the facility.
3. The remote operator instructs, supervises, and provides written instructions to the onsite representative in the proper operation and maintenance of each facility and ensures that adequate records are kept.
 4. The remote operator provides the onsite representative with a telephone number at which the remote operator can be reached at all times. If the remote operator is not available for any reason, the remote operator shall provide the onsite representative with the name and telephone number of a qualified substitute operator who will be available while the remote operator is not available.
 5. The remote operator resides no more than 200 miles by ground travel from any facility that the remote operator serves.
 6. The remote operator operates each facility in compliance with applicable state and federal laws.
 7. The remote operator inspects a facility as often as necessary to ensure proper operation and maintenance, but in no case less than:
 - a. Monthly for a Grade 1 or Grade 2 water treatment plant or distribution system that produces and distributes groundwater;
 - b. Monthly for a Grade 1 wastewater treatment plant;
 - c. Twice a month for a collection system that serves fewer than 2,500 people; and
 - d. Weekly for a Grade 2 wastewater treatment plant or collection system that serves fewer than 1,000 people.
 8. For a Grade 1 water distribution system that does not have an onsite representative and serves fewer than 100 people, the following conditions are met:
 - a. The name and telephone number at which the remote operator can be reached is posted at the facility, enclosed with water bills, or otherwise made readily available to water users. If the remote operator is not available for any reason, the remote operator shall post at the facility the name and telephone number of a substitute operator of the applicable facility class and grade who will be available while the remote operator is not available;
 - b. The remote operator or substitute operator resides no more than 200 miles by ground travel from the facility; and
 - c. The remote operator inspects the facility weekly.
2. Passes a written examination for the applicable class and grade, and
 3. Has not had an operator's certificate revoked in Arizona or permanently revoked in another jurisdiction.
- B.** To apply for operator certification, an applicant shall submit or arrange to have submitted to the Department the following information, as applicable, in a format acceptable to the Department:
1. The applicant's full name, Social Security number, and operator number;
 2. The applicant's current mailing address, home and work telephone numbers, fax number, and e-mail address;
 3. The applicant's place of employment, including the facility identification number;
 4. The class and grade of the facility where the applicant is employed;
 5. Proof of successful completion of the examination for the applicable class and grade; and
 6. Documentation of the applicant's experience and education required under R18-5-112.

Historical Note

Former Section R9-20-507 repealed, new Section R9-20-507 adopted effective November 1, 1979 (Supp. 79-6). Former Section R9-20-507 amended, renumbered as Section R9-20-505, then renumbered as Section R18-4-105 effective October 23, 1987 (Supp. 87-4). R18-5-105 recodified from R18-4-105 (Supp. 95-2). Amended by final rulemaking at 7 A.A.R. 1171, effective February 16, 2001 (Supp. 01-1). Amended by final rulemaking at 14 A.A.R. 4527, effective January 31, 2009 (Supp. 08-4).

R18-5-106. Examinations

- A.** The Department shall provide for examinations for certification of operators. The Department may contract with third party examiners for administration of examinations, based on its assessment of the quality of the examination services. The Department shall ensure that a list of approved examiners is available upon request.
- B.** The Department shall validate all examinations before administration. Each examination shall include topics such as treatment technologies, system maintenance, regulatory protocols, safety, mathematics, and general system management.
- C.** The examiner shall grade the examination and make the results available to the applicant and the Department within seven days of the date of the examination.
- D.** An applicant shall not be admitted to an examination without a valid picture I.D.
- E.** An individual shall make a score of 70 percent on the examination in order to attain a passing grade.

Historical Note

Adopted effective March 19, 1980 (Supp. 80-2). Former Section R9-20-508 amended, renumbered as Section R9-20-506, then renumbered as Section R18-4-106 effective October 23, 1987 (Supp. 87-4). Amended subsection (F) effective November 30, 1988 (Supp. 88-4). R18-5-106 recodified from R18-4-106 (Supp. 95-2). Amended by final rulemaking at 7 A.A.R. 1171, effective February 16, 2001 (Supp. 01-1).

R18-5-105. Certification

- A.** The Department shall issue an operator certificate to an applicant if the applicant:
1. Meets the experience and education requirements in R18-5-112 for the applicable class and grade,

R18-5-107. Certificate Renewal

- A.** If the Department renews a certificate, the certificate is renewed for three years, unless the operator requests a shorter renewal period in writing.
- B.** To renew a certificate, an operator shall complete and submit to the Department an operator certificate renewal form

approved by the Department. An operator shall maintain documentation and provide the documentation to the Department upon request to verify completion of at least 30 PDHs accumulated during a certification period. The operator shall provide documentation of PDHs in a format acceptable to the Department. At least 10 of the PDHs shall directly relate to the specific job functions of the operator. If an operator holds multiple certificates, the operator may apply required PDHs to all certificates if the PDHs are acquired within the applicable certification period. The operator's supervisor or the entity that provides the education or training shall verify completion of each PDH in writing. An operator shall maintain documentation of completion of PDHs for a minimum of five years.

- C. As an alternative to the requirements of subsection (B), an operator may renew a certificate by taking and passing an examination for the applicable class and grade.

Historical Note

Former Section R9-20-509 repealed, new Section R9-20-509 adopted effective November 1, 1979 (Supp. 79-6). Former Section R9-20-509 amended, renumbered as Section R9-20-507, then renumbered as Section R18-4-107 effective October 23, 1987 (Supp. 87-4). Amended subsection (B) effective November 30, 1988 (Supp. 88-4). R18-5-107 recodified from R18-4-107 (Supp. 95-1). Section repealed; new Section adopted by final rulemaking at 7 A.A.R. 1171, effective February 16, 2001 (Supp. 01-1). Amended by final rulemaking at 11 A.A.R. 998, effective April 2, 2005 (Supp. 05-1).

R18-5-108. Certificate Expiration

- A. A certificate expires on the expiration date printed on the certificate. An operator may reinstate an expired certificate for the same class and grade without examination if the operator files the documentation required in R18-5-107(B) with the Department within 90 days of the certificate expiration date.
- B. If an expired certificate is not renewed within 90 days of the certificate expiration date, the Department shall not reinstate the certificate. To be recertified, the operator shall reapply and be reexamined as a new applicant.

Historical Note

Former Section R9-20-510 repealed, new Section R9-20-510 adopted effective November 1, 1979 (Supp. 79-6). Former Section R9-20-510 amended, renumbered as Section R9-20-508, then renumbered as Section R18-4-108 effective October 23, 1987 (Supp. 87-4). Amended subsection (D) effective November 30, 1988 (Supp. 88-4). R18-5-108 recodified from R18-4-108 (Supp. 95-2). Section repealed; new Section adopted by final rulemaking at 7 A.A.R. 1171, effective February 16, 2001 (Supp. 01-1).

R18-5-109. Denial, Suspension, Probation, and Revocation

- A. If the Department decides to deny, suspend, or revoke a certificate, or to place an operator on probation, the Department shall act in accordance with A.R.S. Title 41, Chapter 6, Article 10 and 18 A.A.C. 1, Article 2.
- B. The Department may revoke or suspend a certificate, or place an operator on probation, if the Department finds that the operator:
1. Operates a facility in a manner that violates federal or state law;
 2. Negligently operates a facility or negligently supervises the operation of a facility;
 3. Fails to comply with a Department order or order of a court;

4. Obtains, or attempts to obtain, a certificate by fraud, deceit, or misrepresentation;
5. Engages in fraud, deceit, or misrepresentation in the operation or supervision of a facility;
6. Knowingly or negligently prepares a false or fraudulent report or record regarding the operation or supervision of a facility;
7. Endangers the public health, safety, or welfare;
8. Fails to comply with the terms or conditions of probation or suspension; or
9. Fails to cooperate with an investigation by the Department including failing or refusing to provide information required by this Article.

- C. The Department shall deny certification to an applicant who does not meet the requirements of R18-5-105 or R18-5-110, or who is ineligible for certification pursuant to a Department order or order of a court.
- D. The Department may place an operator on probation or suspend an operator's certificate to address deficiencies in operator performance. The terms of probation or suspension may include completion of additional PDHs, increased reporting of operator activity, limitations on activities the operator may perform, or other terms to address deficiencies in operator performance.
- E. During the period of suspension, an individual whose certificate is suspended shall not operate a facility of the class of the suspended certificate.
- F. An operator whose certificate is suspended or revoked, or who has been placed on probation, shall immediately notify the owner of a facility where the operator is employed of the suspension, revocation, or probation.

Historical Note

Former Section R9-20-511 repealed, new Section R9-20-511 adopted effective November 1, 1979 (Supp. 79-6). Former Section R9-20-511 amended, renumbered as Section R9-20-509, then renumbered as Section R18-4-109 effective October 23, 1987 (Supp. 87-4). R18-5-109 recodified from R18-4-109 (Supp. 95-2). Amended by final rulemaking at 7 A.A.R. 1171, effective February 16, 2001 (Supp. 01-1). Amended by final rulemaking at 11 A.A.R. 998, effective April 2, 2005 (Supp. 05-1). Amended by final rulemaking at 14 A.A.R. 4527, effective January 31, 2009 (Supp. 08-4).

R18-5-110. Reciprocity

The Department shall issue a certificate to an applicant who holds a valid certificate from another jurisdiction, if the applicant:

1. Passes a written, validated examination in Arizona or in another jurisdiction that administers an examination that is substantially equivalent to the examination in Arizona and validated by the Department, and
2. Submits written evidence of the experience and education required under R18-5-112.

Historical Note

Former Section R9-20-512 repealed, new Section R9-20-512 adopted effective November 1, 1979 (Supp. 79-6). Former Section R9-20-512 amended, renumbered as Section R9-20-510, then renumbered as Section R18-4-110 effective October 23, 1987 (Supp. 87-4). Amended subsection (B) effective November 30, 1988 (Supp. 88-4). R18-5-110 recodified from R18-4-110 (Supp. 95-2). Amended by final rulemaking at 7 A.A.R. 1171, effective February 16, 2001 (Supp. 01-1).

R18-5-111. Repealed**Historical Note**

Adopted as Section R9-20-511 and renumbered as Section R18-4-111 effective October 23, 1987 (Supp. 87-4). R18-5-111 recodified from R18-4-111 (Supp. 95-2). Section repealed by final rulemaking at 7 A.A.R. 1171, effective February 16, 2001 (Supp. 01-1).

R18-5-112. Experience and Education

- A.** The Department shall consider the following criteria to determine whether an applicant has the experience and education required for certification in a specific class and grade:
1. Years of experience at a lower grade;
 2. Qualifying experience in the same or a related field; and
 3. Education in a qualifying discipline.
- B.** An applicant shall provide written evidence of education in a qualifying discipline. The applicant shall provide transcripts if the Department determines that the transcripts are necessary to verify completion of the education requirements.
- C.** An applicant shall provide written evidence of qualifying experience in the applicable facility class.
- D.** An applicant shall meet the following requirements for admission to a certification examination:
1. For Grade 1, high school graduation or the equivalent.
 2. For Grade 2, at least:
 - a. High school graduation or the equivalent and one year of qualifying experience as a Grade 1 operator or the equivalent of a Grade 1 operator in another jurisdiction;
 - b. Two years of postsecondary education in a qualifying discipline and one year of qualifying experience, including six months as a Grade 1 operator or the equivalent of a Grade 1 operator in another jurisdiction; or
 - c. A bachelor's degree in a qualifying discipline and six months of qualifying experience.
 3. For Grade 3, at least:
 - a. High school graduation or the equivalent and two years of qualifying experience, including one year as a Grade 2 operator or the equivalent of a Grade 2 operator in another jurisdiction;
 - b. Two years of postsecondary education in a qualifying discipline, and 18 months of qualifying experience as a Grade 2 operator or the equivalent of a Grade 2 operator in another jurisdiction; or
 - c. A bachelor's degree in a qualifying discipline and one year of qualifying experience.
 4. For Grade 4, at least:
 - a. High school graduation or the equivalent and three years of qualifying experience, including one year as a Grade 3 operator or the equivalent of a Grade 3 operator in another jurisdiction;
 - b. Two years of postsecondary education in a qualifying discipline and 30 months of qualifying experience, including one year as a Grade 3 operator or the equivalent of a Grade 3 operator in another jurisdiction; or
 - c. A bachelor's degree in a qualifying discipline, and two years of qualifying experience.

Historical Note

Former Section R9-20-517 repealed, new Section R9-20-517 adopted effective November 1, 1979 (Supp. 79-6). Amended effective March 19, 1980 (Supp. 80-2). Former Section R9-20-517 amended, renumbered as Section R9-

20-512, then renumbered as Section R18-4-112 effective October 23, 1987 (Supp. 87-4). R18-5-112 recodified from R18-4-112 (Supp. 95-2). Amended by final rulemaking at 7 A.A.R. 1171, effective February 16, 2001 (Supp. 01-1). Amended by final rulemaking at 7 A.A.R. 5079, effective October 16, 2001 (Supp. 01-4).

R18-5-113. Classes of Facilities

- A.** The Department shall classify a facility in one of four classes:
1. Water treatment plant,
 2. Water distribution system,
 3. Wastewater treatment plant, or
 4. Wastewater collection system.
- B.** The Department shall classify a facility as one of four grades, Grades 1–4. The grade corresponds with the level of system complexity, with Grade 1 being the most simple and Grade 4 being the most complex.
- C.** For a multi-facility system, the Department shall grade each facility according to complexity and the total population or population equivalent served.

Historical Note

Adopted as Section R9-20-513 and renumbered as Section R18-4-113 effective October 23, 1987 (Supp. 87-4). Amended subsections (A) and (C) effective November 30, 1988 (Supp. 88-4). R18-5-113 recodified from R18-4-113 (Supp. 95-2). Section repealed; new Section adopted by final rulemaking at 7 A.A.R. 1171, effective February 16, 2001 (Supp. 01-1).

R18-5-114. Grades of Wastewater Treatment Plants and Collection Systems

The Department shall grade a wastewater treatment plant or collection system according to population equivalent served, degree of hazard to public health, class of facility, and degree of treatment, as follows:

1. Grade 1 includes:
 - a. A stabilization pond that serves 2,000 or fewer persons;
 - b. A wastewater treatment plant not designated as Grade 2, 3, or 4; or
 - c. A collection system that serves 2,500 or fewer persons.
2. Grade 2 includes:
 - a. A stabilization pond that is designed to serve more than 2,000 persons;
 - b. An aerated lagoon;
 - c. A facility that employs biological treatment based upon the activated sludge principle or trickling filters and is designed to serve 5,000 or fewer persons, except as provided in subsection (3)(c); or
 - d. A collection system that serves between 2,501 to 10,000 persons.
3. Grade 3 includes:
 - a. A facility that employs biological treatment based upon the activated sludge principle and is designed to serve 5,001 to 20,000 persons;
 - b. A facility that employs trickling filtration and is designed to serve 5,001 to 25,000 persons;
 - c. A variation of biological treatment based on the activated sludge principle that requires specialized knowledge, including contact stabilization, and is designed to serve 20,000 or fewer persons; or
 - d. A collection system that serves 10,001 to 25,000 persons.
4. Grade 4 includes:

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- a. A facility that employs biological treatment based upon the activated sludge principle and is designed to serve more than 20,000 persons;
- b. A facility that employs trickling filtration and is designed to serve a population equivalent more than 25,000 persons; or
- c. A collection system that serves more than 25,000 persons.

Historical Note

Former Section R9-20-519 repealed, new Section R9-20-519 adopted effective November 1, 1979 (Supp. 79-6). Former Section R9-20-519 amended, renumbered as Section R9-20-514, then renumbered as Section R18-4-114 effective October 23, 1987 (Supp. 87-4). R18-5-114 recodified from R18-4-114 (Supp. 95-2). Amended by final rulemaking at 7 A.A.R. 1171, effective February 16, 2001 (Supp. 01-1). Amended to correct manifest typographical error in subsection (3)(d) (Supp. 01-3).

R18-5-115. Grades of Water Treatment Plants and Distribution Systems

A. Grading of water treatment plants. This subsection does not apply to a facility that distributes water but does not treat water or to a facility that distributes water and disinfects by chlorine gas or hypochlorite only to maintain disinfection levels in the distribution system. The Department shall grade a water treatment plant according to the sum of the points it the Department assigns for each plant characteristic.

- 1. The Department shall assign points for the purpose of grading a water treatment plant as follows:

Plant Characteristics	Points
Population	1 per 5,000
Maximum Design Capacity	1 per Millions of Gallons per Day up to 10
Groundwater Source	3
Surface or Groundwater Under the Direct Influence of Surface Water Source	5
Carbon Dioxide	2
pH Adjustment	3
Packed Tower Aeration	6
Air Stripping	6
Stability or Corrosion Control	3
Taste and Odor	8
Iron/Manganese Removal	8
Ion Exchange Softening	10
Chemical Precipitation Softening	15
Coagulant Addition	6
Flocculation	4
Sedimentation	4
Upflow Clarification	2
Fluoridation	5
Activated Alumina	6

Blending	5
Residual Waste Stream	5
Control Systems Technology	2
Biologically Active Filter	20
Granular Media Filter	15
Pressure Filter	15
Gravity Sand Filter	10
Membrane Filtration	15
Chlorine Gas	6
Hypochlorite Liquid	2
Hypochlorite Solid	2
Chloramine	9
Chlorine Dioxide	9
Ozone	12
Ultraviolet	3

- 2. The Department shall assign a grade by the total number of points assigned to the facility, as follows:

Grade	Point Range
Grade 1	1 to 25
Grade 2	26 to 50
Grade 3	51 to 70
Grade 4	More than 70

B. Grading of water distribution systems. The Department shall grade a distribution system according to the sum of the points the Department assigns for each system characteristic.

- 1. The Department shall assign points for the purpose of grading a distribution system as follows:

System Characteristics	Points
Population	1 per 5,000
Maximum Design Capacity	1 per Millions of Gallons per Day up to 10
Pressure Zones	5
Booster Stations	5
Storage Tanks	3
Blending	5
Fire Protection Systems/Testable Backflow Prevention Assemblies*	5
Cathodic Protection	3
Control System Technologies	2
Chlorine Gas	6
Hypochlorite Liquid	2
Hypochlorite Solid	2
Chloramine	9

Chlorine Dioxide	9
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*The presence of one or both of these devices earns five points for the facility.

2. No points are added for Grade 1 small systems that:
 - a. Only distribute groundwater;
 - b. Serve fewer than 501 persons;
 - c. Have no disinfection or disinfect by chlorine gas or hypochlorite only; and
 - d. Do not store water or store water only in storage tanks.
3. The Department shall assign a grade by the total number of points assigned to the facility, as follows:

Grade	Point Range
Grade 1	0
Grade 2	1 to 20
Grade 3	21 to 35
Grade 4	More than 35

Historical Note

Former Section R9-20-520 repealed, new Section R9-20-520 adopted effective November 1, 1979 (Supp. 79-6). Former Section R9-20-520 amended, renumbered as Section R9-20-515, then renumbered as Section R18-4-115 effective October 23, 1987 (Supp. 87-4). R18-5-115 recodified from R18-4-115 (Supp. 95-2). Amended by final rulemaking at 7 A.A.R. 1171, effective February 16, 2001 (Supp. 01-1). Amended by final rulemaking at 7 A.A.R. 5079, effective October 16, 2001 (Supp. 01-4). Amended by final rulemaking at 11 A.A.R. 998, effective April 2, 2005 (Supp. 05-1).

R18-5-116. Initial Grading and Regrading of Facilities

- A. The Department shall act under A.R.S. Title 41, Chapter 6, Article 10 and 18 A.A.C. 1, Article 2 when initially grading or when regrading a facility.
- B. If it is determining the initial grade of a facility or whether to regrade a facility, the Department shall consider the facility characteristics in R18-5-114 and R18-5-115, and whether:
 1. The facility has special design features or characteristics that make it unusually difficult to operate;
 2. The water or wastewater is unusually difficult to treat;
 3. The facility uses effluent; or
 4. The facility poses a potential risk to public health, safety or welfare.
- C. The owner of a facility that is regraded under this Article shall ensure that the facility is operated by an operator, in compliance with this Article, no later than one year from the effective date of the facility regrading.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 1171, effective February 16, 2001 (Supp. 01-1).

ARTICLE 2. PUBLIC AND SEMIPUBLIC SWIMMING POOLS AND SPAS

R18-5-201. Definitions

“Air induction system” means a system whereby a volume of air is induced into a hollow ducting in a spa floor, bench, or wall. An air induction system is activated by an air power blower and is separate from the water circulation system.

“Artificial lake” means a man-made lake, lagoon, or basin, lined or unlined, with a surface area equal to or greater than two acres (87,120 square feet), that is used or intended to be used for water contact recreation.

“Backwash” means the process of thoroughly cleaning a filter by the reverse flow of water through the filter.

“Barrier” means a fence, wall, building, or landscaping that obstructs access to a public or semipublic swimming pool or spa.

“Cartridge filter” means a depth, pleated, or surface-type filter component with fixed dimensions that is designed to remove suspended particles from water flowing through the filter.

“Construct” means to build or install a new public or semipublic swimming pool or spa or to enlarge, deepen, or make a major modification to an existing public or semipublic swimming pool or spa.

“Coping” means the cap on a swimming pool or spa wall that provides a finished edge around the swimming pool or spa.

“Cross-connection” means any physical connection or structural arrangement between a potable water system and the piping system for a public or semipublic swimming pool or spa through which it is possible to introduce used water, gas, or any other substance into the potable water system. A bypass arrangement, jumper connection, removable section, swivel or change-over device, or any other temporary or permanent device that may cause backflow is a cross-connection.

“Deck” means a hard surface area immediately adjacent or attached to a swimming pool or spa that is designed for sitting, standing, or walking.

“Deep area” means the portion of a public or semipublic swimming pool that is more than 5 feet in depth.

“Discharge piping” means the portion of the circulation system that carries water from the filter back to the swimming pool or spa.

“Diving area” means the area of a public or semipublic swimming pool that is designated for diving from a diving board, diving platform, or starting block.

“Fill-and-draw swimming pool or spa” means a swimming pool or spa where the principal means of cleaning is the complete removal of the used water and its replacement with potable water.

“Filtration rate” means the rate of water flowing through a filter during the filter cycle expressed in gallons per minute per square foot of effective filter area.

“Flow-through swimming pool or spa” means a swimming pool or spa where new water enters the swimming pool or spa to replace an equal quantity of water that constantly flows out.

“Freeboard” means the vertical wall section of a swimming pool or spa wall between the waterline and the deck.

“Hose bibb” means a faucet with a threaded nozzle to which a hose may be attached.

“Hydrotherapy jet” means a fitting that blends air and water and creates a high-velocity, turbulent stream of air-enriched water for injection into a spa.

“Make-up water” means fresh water used to fill or refill a swimming pool or spa.

“Maximum bathing load” means the design capacity or the maximum number of users that a public or semipublic swimming pool or spa is designed to hold.

“Natural bathing place” means a lake, pond, river, stream, swimming hole, or hot springs which has not been modified by man.

“Operate” means to run, maintain, or otherwise control or direct the functioning of a public or semipublic swimming pool or spa.

“Overflow collection system” means equipment designed to remove water from a swimming pool or spa, including gutters, overflows, surface skimmers, and other surface water collection systems of various designs and manufacture.

“Potable water” means drinking water.

“Private residential spa” means a spa at a private residence used only by the owner, members of the owner’s family, and invited guests, or a spa that serves a housing group consisting of no more than three living units [for example, duplexes or triplexes].

“Private residential swimming pool” means a swimming pool at a private residence used only by the owner, members of the owner’s family, and invited guests, or a swimming pool that serves a housing group consisting of no more than three living units [for example, duplexes or triplexes].

“Public spa” means a spa that is open to the public with or without a fee, including a spa that is operated by a county, municipality, political subdivision, school district, university, college, or a commercial establishment whose primary business is the operation of a spa.

“Public swimming pool” means a swimming pool that is open to the public with or without a fee, including a swimming pool that is operated by a county, municipality, political subdivision, school district, university, college, or a commercial establishment whose primary business is the operation of a swimming pool.

“Recessed treads” means a series of vertically spaced, preformed stepholes in a swimming pool wall.

“Return inlet” means an aperture or fitting through which filtered water returns to a swimming pool or spa.

“Rope and float line” means a continuous line not less than 3/4 inch in diameter that is supported by buoys and attached to opposite sides of a swimming pool to separate areas of the swimming pool.

“Semi-artificial bathing place” means a natural bathing place that has been modified by man.

“Semipublic spa” means a spa operated for the residents of lodgings such as hotels, motels, resorts, apartments, condominiums, townhouse complexes, trailer courts, mobile home parks, or similar establishments. A semipublic spa includes a spa that is operated by a neighborhood or community association for the residents of the community and their guests and any spa at a country club, health club, camp, or similar establishment where the primary business of the establishment is not the operation of a spa and where the use of the spa is included in the fee for the primary use of the establishment.

“Semipublic swimming pool” means a swimming pool operated for the residents of lodgings such as hotels, motels, resorts, apartments, condominiums, townhouse complexes, trailer courts, mobile home parks, or similar establishments. A

semipublic swimming pool includes a swimming pool that is operated by a neighborhood or community association for the residents of the community and their guests and a swimming pool at a country club, health club, camp, or similar establishment where the primary business of the establishment is not the operation of a swimming pool and where the use of the swimming pool is included in the fee for the primary use of the establishment.

“Shallow area” means the portion of a public or semipublic swimming pool that is 5 feet or less in depth.

“Slip-resistant” means a surface that has a static coefficient of friction [wet or dry] of at least 0.50.

“Spa” means an artificial basin, chamber, or tank of irregular or geometric shell design that is intended only for bathing or soaking and that is not drained, cleaned, or refilled for each user. A spa may include features such as hydrotherapy jet circulation, hot water, cold water mineral baths, or an air induction system. Industry terminology for a spa includes “hydrotherapy pool,” “whirlpool,” “hot tub,” and “therapy pool.”

“Special use pool” means a swimming pool intended for competitive aquatic events, aquatic exercise, or lap swimming. A special use pool includes a wave action pool, exit pool for a water slide, swimming pool that is part of an attraction at a water recreation park, water volleyball pool, or a swimming pool with special features used for training and instruction.

“Suction outlet” means the aperture or fitting through which water is withdrawn from a swimming pool or spa.

“Suction piping” means the water circulation system piping that carries water from a swimming pool or spa to the filter.

“Swimming pool” means an artificial basin, chamber, or tank that is designed for swimming or diving.

“Turnover rate” means the number of hours required to circulate a volume of water equal to the capacity of the swimming pool or spa.

“User” means a person who uses a swimming pool, spa, or adjoining deck area.

“Wading pool” means a shallow swimming pool used for bathing and wading by small children.

“Water circulation system” means an arrangement of mechanical equipment connected to a swimming pool or spa by piping in a closed loop that directs water from the swimming pool or spa to the filtration and disinfection equipment and returns the water to the swimming pool or spa.

“Water circulation system components” means the mechanical components that are part of a water circulation system of a swimming pool or spa, including pumps, filters, valves, surface skimmers, ion generators, electrolytic chlorine generators, ozone process equipment, and chemical feeding equipment.

“Water level” means either:

- a. On swimming pools and spas with skimmer systems, the midpoint of the operating range of the skimmers, or
- b. On swimming pools and spas with overflow gutters, the height of the overflow rim of the gutter.

Historical Note

Adopted effective February 19, 1998 (Supp. 98-1).

R18-5-202. Applicability

- A. This Article applies to public and semipublic swimming pools and spas.
- B. This Article does not apply to the following:
 1. A private residential swimming pool or spa,
 2. A swimming pool or spa used for medical treatment or physical therapy and supervised by licensed medical personnel,
 3. A semi-artificial bathing place,
 4. A natural bathing place, or
 5. An artificial lake.

Historical Note

Adopted effective February 19, 1998 (Supp. 98-1).

R18-5-203. Design Approval

- A. A person shall obtain design approval from the Department before starting construction of:
 1. A new public or semipublic swimming pool or spa;
 2. A major modification to an existing public or semipublic swimming pool or spa. For purposes of this subsection, a major modification means a change to the shape, depth, water circulation system, or disinfection system of a public or semipublic swimming pool or spa or the installation of diving equipment at a public or semipublic swimming pool;
 3. A change in use from a semipublic swimming pool to a public swimming pool; and
 4. A change in use from a private residential swimming pool to a public or semipublic swimming pool.
- B. An applicant for a design approval shall submit an ADEQ application form to the Department in quadruplicate with four complete sets of plans and specifications for the swimming pool or spa and the information in subsection (C).
- C. The application for design approval shall include four copies of the following:
 1. A general plot plan;
 2. Plans and specifications showing the size, shape, cross-section, slope, and dimensions of each swimming pool or spa, deck areas, and barriers;
 3. Plans and specifications showing the water circulation and disinfection systems, including all piping, fittings, drains, suction outlets, filters, pumps, surface skimmers, return inlets, chemical feeders, disinfection equipment, gauges, flow meters, and strainers;
 4. Plans and specifications showing the source of water supply and the method of disposal of filter backwash water; used swimming pool or spa water, and wastewater from toilets, urinals, sinks, and showers;
 5. Detailed plans of bathhouses, dressing rooms, equipment rooms, and other appurtenances; and
 6. Additional data required by the Department for a complete understanding of the project.
- D. A professional engineer, architect, or a swimming pool or spa contractor with a current A-9, A-19, KA-5, KA-6 license shall prepare or supervise the preparation of all plans and specifications submitted to the Department for review.
- E. An applicant shall submit an application for design approval to the Department at least 60 days prior to the date that the applicant wishes to begin construction of a swimming pool or spa.
- F. The Department shall determine whether the application for design approval is complete within 30 days of the date of receipt of the application by the Department.
- G. The Department shall issue or deny the application for design approval within 30 days of the date that the Department determines that the application for design approval is complete.

- H. Unless an extension of time is granted in writing by the Department, a design approval is void if construction is not started within one year after the date of its issuance or there is a halt in construction of more than one year.
- I. The Department may issue a design approval with conditions. The Department shall not issue an Approval of Construction if the design approval is conditioned and the construction of the swimming pool or spa does not comply with the stated conditions.
- J. The Department may issue design approvals in phases to allow a political subdivision to start construction of a public swimming pool or spa without issuing a design approval for the entire construction project. A design approval may be issued in phases provided all of the following conditions are met:
 1. A phased design approval is needed to accommodate a design/build contract, phased construction contract, multiple construction contracts, turnkey contract, or special contract that requires construction to begin prior to the completion of design plans and specifications for the entire public swimming pool or spa construction project.
 2. The applicant submits a detailed project description for the entire public swimming pool or spa construction project to the Department.
 3. There is a written agreement between the applicant and the Department which includes the following:
 - a. A construction project schedule,
 - b. A schedule to submit applications and supporting documentation for the phased design approval including any anticipated variance requests,
 - c. Negotiated time-frames for administrative completeness and substantive review of each application for phased design approval, and
 - d. A schedule of construction inspections by the Department or third-party certifications by the applicant.
 4. The applicant certifies in writing that the applicant understands that the public swimming pool or spa cannot be operated without an Approval of Construction for each phase of the construction project pursuant to R18-5-204.
 5. If the applicant and the Department cannot reach agreement regarding a phased design approval or Approval of Construction, then the requirements of R18-5-203(A) through (I) and R18-5-204 apply.

Historical Note

Adopted effective February 19, 1998 (Supp. 98-1).

R18-5-204. Approval of Construction

- A. A public or semipublic swimming pool or spa shall not operate without receiving an Approval of Construction issued by the Department.
- B. The construction of a public or semipublic swimming pool or spa shall conform to plans and specifications that have been approved by the Department. If the applicant wishes to make a change to the approved plans and specifications, the applicant shall submit revised plans and specifications with a written statement of the reasons for the change to the Department. The applicant shall obtain Department approval of the revised plans and specifications before starting any work affected by the change.
- C. Prior to any construction that will cover the piping arrangement of the swimming pool or spa and at least 30 days prior to the expected date of completion of construction of a public swimming pool or spa, the applicant shall notify the Department to permit a construction inspection. The Department shall inspect the construction of a swimming pool or spa to determine if the swimming pool or spa has been constructed in

accordance with Department-approved plans, specifications, and conditions unless a professional engineer, architect, or registered sanitarian certifies that the swimming pool or spa has been constructed in accordance with Department-approved plans, specifications, and conditions.

- D. If the swimming pool or spa has been constructed in accordance with Department-approved plans, specifications, and conditions, the Department shall issue the Approval of Construction within 30 days of the date of the construction inspection by the Department or the date the Department receives third-party certification.

Historical Note

Adopted effective February 19, 1998 (Supp. 98-1).

R18-5-205. Prohibitions

- A. A fill-and-draw swimming pool or spa shall not be used as a public or semipublic swimming pool or spa.
 B. A private residential spa shall not be used as a public or semipublic spa.

Historical Note

Adopted effective February 19, 1998 (Supp. 98-1).

R18-5-206. Water Source

Only water from a source that is approved by the Department shall be used in a public or semipublic swimming pool or spa. Reclaimed wastewater shall not be used as make-up water for a public or semipublic swimming pool or spa.

Historical Note

Adopted effective February 19, 1998 (Supp. 98-1).

R18-5-207. Construction Materials

- A. A public or semipublic swimming pool or spa shall be constructed of concrete or other structurally rigid material that is equivalent in strength or durability to concrete, except that a public or semipublic spa may be constructed of fiberglass or acrylic.
 B. A public or semipublic swimming pool or spa shall be constructed of materials that are nontoxic.
 C. A public or semipublic swimming pool or spa shall be constructed of waterproof materials that provide a watertight structure.
 D. A public or semipublic swimming pool or spa shall have a smooth and easily cleaned surface, without cracks or joints, excluding structural joints, or to which a smooth, easily cleaned surface finish is applied or attached.
 E. All corners in a public or semipublic swimming pool or spa shall be rounded, including the corners formed by the intersection of a wall and floor.
 F. A surface within a public or semipublic swimming pool or spa intended to provide footing for users shall have a slip-resistant surface. The roughness or irregularity of the surface shall not cause injury or discomfort to users' feet during normal use.
 G. The color, pattern, or finish of the interior of a public or semipublic swimming pool or spa shall not obscure objects, surfaces within the swimming pool or spa, debris, sediment, or algae. Surface finishes shall be white, pastel, or other light color. The interior finish shall completely line the swimming pool or spa to the coping, tile, or gutter system.

Historical Note

Adopted effective February 19, 1998 (Supp. 98-1).

R18-5-208. Maximum Bathing Load

- A. The maximum bathing load for a public or semipublic swimming pool or spa shall not be exceeded.

- B. The maximum bathing load for a public or semipublic swimming pool shall be calculated as the sum of the following:
 1. The shallow area of the swimming pool in square feet divided by 10 square feet, plus
 2. The deep area of the swimming pool in square feet minus 300 square feet for each diving board divided by 24 square feet.
 C. The maximum bathing load for a public swimming pool shall be limited by the number of users for the toilets, showers, or lavatories that are provided in the bathhouses or dressing rooms prescribed in R18-5-242.
 D. The maximum bathing load for a public or semipublic spa shall not exceed the area of the spa in square feet divided by 9 square feet.
 E. The maximum bathing load for a public or semipublic swimming pool or spa shall be posted.

Historical Note

Adopted effective February 19, 1998 (Supp. 98-1).

R18-5-209. Shape

- A. A public or semipublic swimming pool or spa may be any shape except that the designer shall shape a public or semipublic swimming pool or spa to minimize hazards to users and provide adequate circulation of swimming pool or spa water.
 B. There shall be no protrusions, extensions, means of entanglement, or other obstructions in a public or semipublic swimming pool or spa that may cause entrapment of or injury to the user. This subsection does not prohibit water features such as water fountains, slides, water play equipment, or water volleyball and basketball nets.

Historical Note

Adopted effective February 19, 1998 (Supp. 98-1).

R18-5-210. Walls

- A. Where a racing lane terminates in a swimming pool, the wall shall be plumb to a minimum depth of 5 feet below the waterline. Below the 5-foot depth, the wall shall be radiused to join the floor.
 B. There shall be no projections from a swimming pool or spa wall except for coping, cantilevered deck, ladders, and steps.
 C. An underwater seat shall comply with the following:
 1. The edges of an underwater seat shall be outlined with a sharply contrasting colored tile or other material that is clearly visible from the deck adjacent to the underwater seat;
 2. An underwater seat shall have a slip-resistant surface;
 3. An underwater seat shall be located outside of the deep area of a swimming pool that is equipped for diving. An underwater seat may be located in the deep area of a swimming pool that is not equipped for diving provided the underwater seat is either completely recessed into the swimming pool wall, shaped to be compatible with the shape of the swimming pool wall, or in a corner of the swimming pool;
 4. The maximum depth of an underwater seat is 24 inches below the waterline. The minimum depth of an underwater seat is 12 inches below the waterline; and
 5. The maximum width of an underwater seat is 20 inches.
 D. If a spa is located immediately adjacent to a swimming pool, the separating wall between the spa and the swimming pool shall be no more than 8 inches wide. The top of the separating wall shall be no lower than the level of the coping of the swimming pool. If a separating wall is more than 8 inches wide, then the deck width shall comply with R18-5-217(D). A spa

shall not be located immediately adjacent to the deep area of a swimming pool.

- E. Coping or cantilevered deck may project from a swimming pool or spa wall to provide a handhold for users. The coping or deck shall be rounded, have a slip-resistant surface finish, and shall not exceed 3 1/2 inches in thickness. The overhang of the coping or deck shall not exceed 2 inches or be less than 1 inch. All corners created by coping or cantilevered deck shall be rounded in both the vertical and horizontal dimensions to eliminate sharp corners.

Historical Note

Adopted effective February 19, 1998 (Supp. 98-1).

R18-5-211. Freeboard

- A. The freeboard in a public or semipublic swimming pool or spa shall not exceed 8 inches, except as provided in subsection (B).
- B. The freeboard in a semipublic swimming pool may exceed 8 inches to provide for walls, terraces, or other design features. The Department shall review each request to allow an increase in freeboard on a case-by-case basis. In reviewing the request, the Department shall consider safety, exit distances, alternative exits, and location. The length and height of the section where the freeboard area may be increased is limited. All of the following requirements shall be met:
1. Guard rails or similar devices are provided to prevent any raised area from being used as a diving platform.
 2. The vertical surfaces of the freeboard area are constructed of inorganic materials. All vertical surfaces shall be rigid, smooth, and easily cleanable.
 3. The horizontal surface areas comply with the provisions of this Article for decks.
 4. The vertical surface area is included as surface area of the swimming pool to determine the type, size, location, and numbers of equipment and piping.

Historical Note

Adopted effective February 19, 1998 (Supp. 98-1).

R18-5-212. Floors

- A. The slope of the floor of a public or semipublic swimming pool, from the end wall in the shallow area towards the deep area to the point of the first slope change shall be uniform and shall not exceed 1 foot of fall in 10 feet. The floor slope in a public or semipublic spa shall not exceed 1 foot of fall in 10 feet.
- B. The floor slope of a public or semipublic swimming pool, from the point of the first slope change to the deepest part of the swimming pool, shall not exceed 1 foot of fall in 3 feet.
- C. For a public or semipublic swimming pool that is equipped for diving, the depth of the swimming pool at the point of the first slope change shall be a minimum of 5 feet. For a public or semipublic swimming pool that is not equipped for diving, the depth of the swimming pool at the point of the first slope change shall be a minimum of 4 feet.
- D. All portions of a swimming pool or spa floor shall slope towards a main drain.
- E. The transitional radius where the floor of a public or semipublic swimming pool joins a wall shall comply with the following:
1. The center of the radius shall be no less than 3 feet below the waterline in the deep area or 2 feet below the waterline in the shallow area.
 2. The radius shall be tangent at the point where the radius meets the wall or floor.

3. The radius shall be equal to or greater than the depth of the swimming pool minus the vertical wall depth measured from the waterline minus 3 inches.

Historical Note

Adopted effective February 19, 1998 (Supp. 98-1).

R18-5-213. Entries and Exits

- A. Each public or semipublic swimming pool shall have at least two means of entry or exit consisting of ladders, steps, or recessed treads.
- B. There shall be at least one ladder, set of steps, or set of recessed treads for each 75 feet of perimeter of a public or semipublic swimming pool or spa.
- C. At least one means of entry and exit shall be provided in the deep area and at least one means of entry and exit shall be provided in the shallow area of a public or semipublic swimming pool. Where the water depth is 2 feet at the swimming pool wall in the shallow area or where there is a zero depth entry pool [for example, an artificial beach], the area shall be considered a means of entry or exit.
- D. A set of steps shall be provided in a public or semipublic spa.
- E. The location of stairs, ladders, and recessed treads shall not interfere with racing lanes.

Historical Note

Adopted effective February 19, 1998 (Supp. 98-1).

R18-5-214. Steps

- A. Each set of steps shall be provided with at least one handrail to serve all treads and risers. Handrails shall be provided at one side or in the center of all steps. Handrails shall be installed in such a way that they can be removed only with tools.
- B. Steps shall be permanently marked to be clearly visible from above and below the water level in a swimming pool or spa. The edges of steps shall be outlined with a sharply contrasting colored tile or other material that is clearly visible from the deck adjacent to the steps.
- C. Steps may be constructed only in the shallow area of a public or semipublic swimming pool.
- D. Steps shall not project into a public or semipublic swimming pool or spa in a manner that creates a hazard to users.
- E. All tread surfaces on steps shall have slip-resistant surfaces.
- F. Step treads shall have a minimum unobstructed horizontal depth of 10 inches. Risers shall have a maximum uniform height of 12 inches, with the bottom riser height allowed to vary \pm 2 inches from the uniform riser height.

Historical Note

Adopted effective February 19, 1998 (Supp. 98-1).

R18-5-215. Ladders

- A. At least one ladder shall be provided in the deep area of a public or semipublic swimming pool. If the width of the deep area of a swimming pool is greater than 20 feet, then one ladders shall be located on opposite sides of the deep area.
- B. A swimming pool or spa ladder shall be equipped with two handrails.
- C. All treads on ladders shall have slip-resistant surfaces.
- D. Ladder treads shall have a minimum horizontal depth of 1 1/2 inches. The distance between ladder treads shall range from a minimum of 7 inches to a maximum of 12 inches.
- E. Below the waterline, there shall be a clearance of not more than 6 inches and not less than 3 inches between any ladder tread edge and the wall as measured from the side of the tread closest to the wall.

Historical Note

Adopted effective February 19, 1998 (Supp. 98-1).

R18-5-216. Recessed Treads

- A. Recessed treads with handrails may be substituted for ladders.
- B. Recessed treads shall be pre-formed, readily cleanable, and designed to drain into the swimming pool or spa to prevent the accumulation of dirt in the recessed treads.
- C. Each set of recessed treads shall be equipped with two handrails.
- D. All recessed treads shall have slip-resistant surfaces.
- E. The vertical distance between the swimming pool or spa coping edge or deck and the uppermost recessed tread shall be a maximum of 12 inches. Recessed treads at the centerline shall have a uniform vertical spacing of 12 inches maximum and 7 inches minimum.
- F. Recessed treads shall be at least 5 inches deep and 12 inches wide.

Historical Note

Adopted effective February 19, 1998 (Supp. 98-1).

R18-5-217. Decks and Deck Equipment

- A. Decks, ramps, coping, and similar step surfaces shall be constructed of concrete or other inorganic material, have a slip-resistant finish, and be easily cleanable.
- B. The minimum continuous unobstructed deck width, including the coping, shall be 10 feet for a public swimming pool and 4 feet for a semipublic swimming pool. The dimensional design of decks at public and semipublic swimming pools shall comply with the dimensions shown in Illustration B.
- C. A minimum 5 feet of deck width shall be provided on the sides and rear of any diving equipment at a public swimming pool. A minimum 4 feet of deck width shall be provided on the sides and rear of any diving equipment at a semipublic swimming pool. If diving equipment is installed at a public swimming pool, there shall be a minimum 15 feet of deck width from the swimming pool wall to the edge of the deck behind the diving equipment [See Illustration B].
- D. A continuous unobstructed deck width of at least 4 feet, which may include the coping, shall be provided on at least two contiguous sides and around at least 50% of the perimeter of a public or semipublic spa.
- E. Decks shall be sloped to effectively drain either to perimeter areas or to deck drains. Drainage shall remove splash water, deck cleaning water, and rain water without leaving standing water. The minimum slope of the deck shall be 1/4 inch per 1 foot. The maximum slope of the deck shall be 1 inch per 1 foot, except for ramps.
- F. Decks shall be edged to eliminate sharp corners.
- G. Site drainage shall be provided to direct all perimeter deck drainage and general site and roof drainage away from a public or semipublic swimming pool or spa. Yard drains may be required to prevent the accumulation or puddling of water in the general area of the deck and related improvements.
- H. Hose bibbs shall be provided along the perimeter of the deck so that all parts of the deck may be washed down. At a minimum, each hose bibb shall be protected against back siphonage with an atmospheric vacuum breaker. The Department may approve quick disconnect style hose bibbs.
- I. Any valve that is installed in or under any deck shall provide a minimum 10-inch diameter access cover and a valve pit to facilitate the repair and maintenance of the valve.
- J. Joints in decks shall be provided to minimize the potential for cracks due to changes in elevations or movement of the slab. The maximum voids between adjoining concrete slabs or between concrete slabs and expansion joint material shall be 3/

16 inch of horizontal clearance with a maximum difference in vertical elevation of 1/4 inch. Areas where the deck joins concrete shall be protected by expansion joints to protect the swimming pool or spa from the pressures of relative movements. Construction joints where pool or spa coping meets the deck shall be watertight and shall not allow water to pass through to the underlying ground.

Historical Note

Adopted effective February 19, 1998 (Supp. 98-1).

R18-5-218. Lighting

- A. A public or semipublic swimming pool or spa and adjacent deck areas shall be lighted by natural or artificial means when they are in use.
- B. A public or semipublic swimming pool or spa that is intended to be used at night shall be equipped with artificial lighting that is designed and spaced so that all parts of the swimming pool or spa, including the bottom, may be seen without glare.

Historical Note

Adopted effective February 19, 1998 (Supp. 98-1).

R18-5-219. Water Depths

- A. Except as provided in subsection (B), the minimum water depth in the shallowest area of a public or semipublic swimming pool shall be 2 feet. The maximum water depth in the shallowest area of a public or semipublic swimming pool shall be 3 feet. In public swimming pools, where racing lanes terminate, the minimum depth shall be 5 feet from the water level to the point where the vertical wall is radiused to join the floor.
- B. The Department may approve a depth of less than 2 feet in a wading pool or to allow a zero depth entry swimming pool.
- C. The maximum water depth in a public or semipublic spa shall be 42 inches, measured from the water level.

Historical Note

Adopted effective February 19, 1998 (Supp. 98-1).

R18-5-220. Depth Markers

- A. Water depths shall be conspicuously and permanently marked at or above the water level on the vertical wall and on the top of the coping or the edge of the deck next to a swimming pool.
 1. Depth markers on a vertical wall shall be positioned to be read from the water side.
 2. Depth markers on a deck shall be located within 18 inches of the side of the swimming pool and positioned to be read while standing on the deck facing the water. Depth markers that are located on a deck shall be made of slip-resistant materials.
- B. Depth markers for a public or semipublic swimming pool shall be installed at points of maximum and minimum water depth and at all points of slope change. Depth markers are required in the shallow area at 1-foot depth intervals to a depth of 5 feet. Thereafter, depth markers shall be installed at 2-foot depth intervals. Depth markers shall not be spaced at distances greater than 25 feet.
- C. Depth markers shall be located on both sides and at both ends of a public or semipublic swimming pool.
- D. Depth markers shall be in Arabic numerals with a 4-inch minimum height. Arabic numerals shall be of contrasting color to the background.
- E. In public swimming pools with racing lanes, approach warning markers shall be placed below the water level on the opposite walls at the ends of each racing lane. Warning markers shall be of contrasting color to the background. Warning markers shall be clearly visible in or out of the water from a minimum distance of 10 feet.

- F. The shallow area of a public swimming pool shall be visually set apart from the deep area of the pool by a rope and float line.
- G. Depth markers for a public or semipublic spa shall comply with all of the following:
1. A public or semipublic spa shall have permanent depth markers with numbers that are a minimum of 4 inches high. Depth markers shall be plainly and conspicuously visible from all points of entry.
 2. The maximum depth of a public or semipublic spa shall be clearly indicated by depth markers.
 3. There shall be a minimum of 2 depth markers at each public or semipublic spa.
 4. Depth markers shall be spaced at no more than 25-foot intervals and shall be uniformly located around the perimeter of the spa.
 5. Depth markers shall be positioned on the deck within 18 inches of the side of the spa. A depth marker shall be positioned so that it can be read by a person standing on the deck facing the water.
 6. Depth markers that are on deck surfaces shall be made of slip-resistant material.
- L. There shall be a completely unobstructed clear vertical distance of 13 feet above any diving board measured from the center of the front end of the board. This clear, unobstructed vertical space shall extend horizontally at least 8 feet behind, 8 feet to each side, and 16 feet ahead of the front end of the board.

Historical Note

Adopted effective February 19, 1998 (Supp. 98-1).

R18-5-222. Prohibition Against Diving; Warning Signs

- A. Diving equipment is prohibited in a public or semipublic swimming pool that does not meet the minimum diving well dimensions specified in Illustration A. If a public or semipublic swimming pool does not meet the dimensional requirements prescribed in Illustration A for diving, then the owner shall prominently display at least one sign that cautions users that the swimming pool is not suitable for diving. The warning sign shall state "NO DIVING" in letters that are 4 inches or larger or display the international symbol for no diving.
- B. Diving from the deck of a public or semipublic swimming pool into water that is less than 5 feet deep shall be prohibited. Warning markers indicating in words or symbols that diving is prohibited shall be placed on the deck within 18 inches of the side of the shallow area of the swimming pool. A warning marker shall be positioned so that it can be read by a person standing on the deck facing the water.

Historical Note

Adopted effective February 19, 1998 (Supp. 98-1).

R18-5-221. Diving Areas and Equipment

- A. The dimensions of a diving area in a public or semipublic swimming pool shall comply with minimum requirements for length, width, depth, area, and other dimensions specified in Illustration A. The diving well profile in Illustration A does not apply to a special use pool that is intended for competitive diving and has been approved by Department pursuant to R18-5-248(A).
- B. Diving equipment shall be permanently anchored to the swimming pool deck. Equipment shall be rigidly constructed with sufficient bracing to ensure stability. Supports, platforms, steps, and ladders for diving equipment shall be designed to carry anticipated loads.
- C. All diving stands higher than 21 inches, measured from the deck to the top of the board, shall be provided with stairs or a ladder.
- D. Diving equipment shall have a durable finish. The surface finish shall be free of tears, splinters, or cracks that may be a hazard to users.
- E. Steps and ladders leading to diving boards and diving platforms shall be of corrosion-resisting materials and shall have slip-resistant tread surfaces. Step treads shall be self-draining.
- F. Diving boards, diving platforms, and starting blocks shall have slip-resistant tread surfaces.
- G. Handrails shall be provided at all steps and ladders leading to diving boards that are 1 meter or more above the water.
- H. Diving boards and diving platforms that are 1 meter or higher shall be protected with guard rails. Guard rails shall be at least 30 inches above the diving board or diving platform and shall extend to the edge of the swimming pool wall.
- I. A label shall be permanently affixed to a diving board and shall include the following:
1. Manufacturer's name and address,
 2. Board length, and
 3. Fulcrum setting instructions.
- J. The maximum diving board height over the water is 3 meters. The maximum height of a diving platform over the water is 10 meters.
- K. Starting blocks shall be located in the deep end of a public swimming pool or where the depth of the water is at least 5 feet.

R18-5-223. Water Circulation System

- A. A public or semipublic swimming pool or spa shall have a water circulation system that provides complete circulation of water through all parts of the swimming pool or spa and can maintain water chemistry and water clarity requirements.
- B. The water circulation system for a public or semipublic swimming pool shall have a turnover rate of at least once every 8 hours. The water circulation system of a public or semipublic spa shall have a turnover rate of at least once every 30 minutes. The water circulation system for a wading pool shall have a turnover rate of at least once every hour. The water circulation system shall be designed to give the proper turnover rate without exceeding the maximum filtration rate for the filter in R18-5-227(E).
- C. Water circulation system components shall comply with American National Standard/NSF International Standard Number 50, "Circulation System Components and Related Materials for Swimming Pools, Spas/Hot Tubs," NSF International, 3475 Plymouth Road, P.O. Box 130140, Ann Arbor, Michigan [revised July, 1996, and no future editions] which is incorporated by reference and on file with the Office of the Secretary of State and the Department.
- D. Water circulation system components shall be accessible for inspection, repair, or replacement.
- E. Except as provided by this subsection, water withdrawn from a public or semipublic swimming pool or spa shall not be returned unless it has been filtered and adequately disinfected. Water may be withdrawn from a swimming pool for a water slide or a water fountain without being filtered or disinfected.
- F. In a swimming pool complex with more than one swimming pool or where there is a combination of swimming pools and spas, each swimming pool and spa shall have a separate water circulation system.
- G. Hydrotherapy jets or other devices which create roiling water or similar effects in a spa shall not be connected to the water

circulation system, but shall be operated through a separate system.

Historical Note

Adopted effective February 19, 1998 (Supp. 98-1). Mani-fest typographical error corrected in subsection (B) (Supp. 01-1).

R18-5-224. Piping and Fittings

- A. The water velocity in discharge piping for public and semipublic swimming pools and spas shall not exceed 10 feet per second, except for copper discharge piping where the velocity shall not exceed 8 feet per second. The water velocity in suction piping shall not exceed 6 feet per second. Piping shall be sized to permit the rated flows for filtering and cleaning without exceeding the maximum head of the pump.
- B. Water circulation system piping and fittings shall be constructed of materials that are able to withstand 150% of normal operating pressures. Suction piping shall be of sufficient strength so that it does not collapse when there is a complete shutoff of flow on the suction side of the pump. A licensed Arizona contractor shall conduct an induced static hydraulic pressure test of the water circulation system piping at 25 pounds per square inch for at least 30 minutes. The pressure test shall be performed before the deck is poured. Pressure in the water circulation system piping shall be maintained during the deck pour.
- C. Water circulation piping and fittings shall be made of non-toxic, corrosion-resistant materials.
- D. Water circulation piping and fittings shall be installed so that piping or fittings do not project into a public or semipublic swimming pool or spa in a manner that is hazardous to users.
- E. Piping that is subject to damage by freezing shall have a uniform slope in one direction and shall be equipped with valves that will permit the complete drainage of the water in the swimming pool or spa.
- F. Piping shall be designed to drain the swimming pool or spa water by removing drain plugs, manipulating valves, or other means.
- G. Piping systems shall be identified by color or by stencils or labels located at conspicuous points.
- H. Plastic water circulation piping shall comply with American National Standard/NSF International Standard Number 14, "Plastics Piping System Components and Related Materials," NSF International, 3475 Plymouth Road, P.O. Box 130140, Ann Arbor, Michigan [revised September, 1996, and no future editions] which is incorporated by reference and on file with the Office of the Secretary of State and the Department.

Historical Note

Adopted effective February 19, 1998 (Supp. 98-1).

R18-5-225. Pumps and Motors

- A. A pump and motor shall be provided for each water circulation system. The pump shall be sized to meet but not to exceed the flow rate required for filtering against the total head developed by the complete water circulation system. The pump shall be sized to comply with the turnover rate prescribed in R18-5-223(B).
- B. Pumps and motors shall be readily and easily accessible for inspection, maintenance, and repair. When the pump is below the waterline, valves shall be installed on permanently connected suction and discharge lines. The valves shall be readily and easily accessible for maintenance and removal of the pump.
- C. Each motor shall have an open, drip-proof enclosure. Each motor shall be constructed electrically and mechanically to

perform satisfactorily and safely under the conditions of load in the environment normally encountered in swimming pool or spa installations. Each motor shall be capable of operating the pump under full load with a voltage variation of $\pm 10\%$ from the nameplate rating. Each motor shall have thermal or current overload protection to provide locked rotor and running protection. Thermal or current overload protection may be built into the motor or in the line starter.

- D. The pump shall be equipped with an emergency shut-off switch that is located within the swimming pool or spa enclosure to cut off power to the water circulation system if someone is entrapped on a main drain or suction outlet.

Historical Note

Adopted effective February 19, 1998 (Supp. 98-1).

R18-5-226. Drains and Suction Outlets

- A. A public and semipublic swimming pool shall be equipped with at least two main drains located in the deepest part of the swimming pool or a single gravity drain that discharges to a surge tank.
- B. Each main drain shall be covered by a grate that is not readily removable by users. The openings in the grate shall have a total area that is at least four times the area of the drain pipe.
- C. The spacing of the main drains shall not be greater than 20 feet on centers and not more than 15 feet from each side wall.
- D. A minimum of two suction outlets shall be provided for each pump in a suction outlet system for a public or semipublic spa. The suction outlets shall be separated by a minimum of 3 feet or located on two different planes [that is, one suction outlet on the bottom and one on a vertical wall or one suction outlet each on two separate vertical walls]. The suction outlets shall be plumbed to draw water through them simultaneously through a common line to the pump. Suction outlets shall be plumbed to eliminate the possibility of entrapping suction.
- E. If the suction outlet system for a public or semipublic swimming pool or spa has multiple suction outlets that can be isolated by valves, then each suction outlet shall protect against user entrapment by either an antivortex cover, a grate, or other means approved by the Department.
- F. A public or semipublic spa may be equipped with a single gravity drain which discharges to a surge tank instead of suction outlets. The total velocity of water through grate openings of the drain shall not exceed 2 feet per second.

Historical Note

Adopted effective February 19, 1998 (Supp. 98-1).

R18-5-227. Filters

- A. Filters shall be designed, located, and constructed to permit removal of filter manhole covers or heads for inspection, replacement, or repair of filter elements or filter media. No filtration system shall be installed beneath the surface of the ground or within an enclosure without providing adequate access for inspection and maintenance.
- B. Pressure-type filters shall be equipped with a means to release internal pressure. Each pressure filter shall be equipped with an air relief piping system connected at an accessible point near the crown. Automatic air relief systems may be used instead of manual systems. The design of a filter with an automatic air relief system as its principal means of air release shall include lids that provide a slow and safe release of pressure. The design of a separation tank used in conjunction with any filter tank shall include a manual means of air release or a lid which provides a slow and safe release of pressure as it is opened.

- C. Pressure filter systems shall be equipped with a sight glass installed on the waste discharge pipe.
- D. Swimming pool and spa filters shall comply with American National Standard/NSF International Standard Number 50, "Circulation System Components and Related Materials for Swimming Pools, Spas/Hot Tubs," NSF International, 3475 Plymouth Road, P.O. Box 130140, Ann Arbor, Michigan [revised July, 1996, and no future editions] which is incorporated by reference and on file with the Office of the Secretary of State and the Department.
- E. The maximum filtration rate shall not exceed the design flow rate prescribed by the National Sanitation Foundation Standard 50 for commercial filters. In no case shall the maximum filtration rate exceed the following:
 1. The rate of filtration in a high-rate sand filter shall not exceed 25 gallons/minute/square foot.
 2. The rate of filtration of a diatomaceous earth filter shall not exceed 2 gallons/minute/square foot.
 3. The rate of filtration of a cartridge filter shall not exceed 0.375 gallons/minute/square foot.

Historical Note

Adopted effective February 19, 1998 (Supp. 98-1).

R18-5-228. Return Inlets

- A. Adjustable return inlets shall be provided for each public and semipublic swimming pool or spa. Return inlets shall be designed, sized, and installed to produce a uniform circulation of water throughout the swimming pool or spa. Where surface skimmers are used, return inlets on vertical walls shall be located to help bring floating particles within range of the surface skimmers.
- B. A public or semipublic swimming pool shall have a minimum of two return inlets, regardless of the size of the swimming pool. The number of return inlets shall be based on two return inlets per 600 square feet of surface area, or fraction thereof.
- C. Return inlets in a public or semipublic swimming pool shall be on a closed loop piping system. Public or semipublic spas with three or more return inlets shall be on a closed loop piping system.
- D. Where the width of a public or semipublic swimming pool exceeds 30 feet, bottom returns shall be required. Bottom returns shall be flush with the pool bottom or designed to prevent injury to users.

Historical Note

Adopted effective February 19, 1998 (Supp. 98-1).

R18-5-229. Gauges

- A. Pressure gauges shall be installed on the water circulation system for each public and semipublic swimming pool and spa. Pressure gauges shall be installed in accessible locations where they can be read easily.
- B. Pressure gauges shall be installed on the inlet and outlet manifold of the filter. Pressure gauges shall read at intervals of 1 pound per square inch [psi].

Historical Note

Adopted effective February 19, 1998 (Supp. 98-1).

R18-5-230. Flow meter

A public swimming pool shall be equipped with, a flow meter which indicates the rate of backwash through the filter. The flow meter shall be installed between the pump and the filter on a straight section of pipe in accordance with the manufacturer's specifications in a location where it can be read easily. The flow meter shall measure the rate of flow through the filter in gallons per minute and shall be accurate to within 5% under all conditions of

flow. The flow meter shall have an indicator with a range of at least 150% of the normal flow rate.

Historical Note

Adopted effective February 19, 1998 (Supp. 98-1).

R18-5-231. Strainers

The water circulation system shall include a removable strainer located upstream of the pump to prevent solids, debris, hair, or lint from reaching the pump and filters. The strainer shall be made of corrosion-resistant material. A strainer shall have openings that have a total area which is equal to at least four times the area of the suction piping.

Historical Note

Adopted effective February 19, 1998 (Supp. 98-1).

R18-5-232. Overflow Collection Systems

- A. An overflow collection system shall be installed in each public or semipublic swimming pool or spa.
- B. The overflow collection system shall be designed and constructed so that the water level of the swimming pool is maintained at the mid-point of the operating range of the system's rim or weir device.
- C. Rim type overflow collection systems shall be installed on at least two opposite sides and have a total length of at least 50% of the perimeter of a public or semipublic swimming pool. The overflow collection system shall be capable of carrying 50% of the design capacity of the water circulation system.
- D. If overflow gutters are used, they shall be installed continuously around the swimming pool with the lip of the gutter level throughout its perimeter. Overflow gutters shall be provided with sufficient opening at the top and width at the bottom to permit easy cleaning. The overflow gutter bottom shall be pitched 1/4 inch per foot to drainage outlets located not more than 10 feet apart. Outlet piping shall be sized to circulate at least 50% of the capacity of the water circulation system and be properly covered by a drain grate. The surge tank for the overflow gutters shall be equipped with float controls which regulate the main drain, fill line, and overflow. The system surge capacity shall not be less than one gallon for each square foot of swimming pool surface area. Stainless steel gutters and other specialty gutter systems may be used if they are hydraulically equivalent to overflow gutters.
- E. Surface skimmers shall be recessed into the swimming pool or spa wall and shall be installed to achieve effective skimming action throughout the swimming pool or spa.
 1. A surface skimmer shall be provided for each 400 square feet of surface area, or fraction thereof, of a public or semipublic swimming pool. A minimum of two surface skimmers are required in a public or semipublic swimming pool. A surface skimmer shall be provided for each 200 square feet of surface area, or fraction thereof, of a public or semipublic spa.
 2. The overflow slot shall be set level and shall not be less than 8 inches in width at the narrowest section.
 3. The rate of flow through the skimmers shall be a minimum of 75% of the water circulation system capacity. Surface skimmers shall be designed to carry at least 30 gallons per minute per lineal foot of weir throat.
 4. Where three or more surface skimmers are used, they must be on a closed loop piping system.
 5. At least one surface skimmer shall be located on the side or near the corner of the swimming pool that is downwind of the area's prevailing winds.
 6. Main drain piping shall be designed to carry at least 50% of the design flow.

- F. Mixed inlet types [for example, surface skimmers and gutters] are prohibited in a public or semipublic swimming pool.

Historical Note

Adopted effective February 19, 1998 (Supp. 98-1).

R18-5-233. Vacuum Cleaning Systems

A vacuum cleaning system shall be provided for each public and semipublic swimming pool. A vacuum cleaning system shall not create a hazard or interfere with the operation or use of the swimming pool. In integral systems, a sufficient number of vacuum cleaner fittings shall be located in accessible positions at least 10 inches below the water line. Alternatively, vacuum cleaner fittings may be installed as an attachment to the surface skimmers. A pressure cleaning system may be installed in addition to the required vacuum cleaning system.

Historical Note

Adopted effective February 19, 1998 (Supp. 98-1).

R18-5-234. Disinfection

- A. An adjustable automatic chemical feeder shall be provided to ensure the continuous disinfection of the water in a public or semipublic swimming pool or spa. Timers on disinfection equipment are prohibited. Disinfection shall be accomplished by chlorination or by another method that is approved by the Department. The method of disinfection shall effectively maintain an adequate disinfectant residual in the water which is subject to field testing by methods that are easy to use and accurate.

1. Chlorine disinfection equipment for a public or semipublic swimming pool shall be designed to maintain a free chlorine residual of 1.0 to 3.0 ppm. Chlorine disinfection equipment for a public or semipublic spa shall be designed to maintain a free chlorine residual of 3.0 to 5.0 ppm.
2. Bromine disinfection equipment for a public or semipublic swimming pool shall be designed to maintain a bromine residual of 2.0 to 4.0 ppm. Bromine disinfection equipment for a public or semipublic spa shall be designed to maintain a bromine residual of 3.0 to 5.0 ppm.

- B. The use of chlorinated isocyanurates or cyanuric acid stabilizer for disinfection and stabilization is permitted. If used, chlorinated isocyanurates shall be fed so as to maintain required disinfectant residual levels. Cyanuric acid levels, whether from chlorinated isocyanurates or from the separate addition of cyanuric acid stabilizer, shall not exceed 150 ppm.
- C. The use of chloramines as a primary disinfectant of swimming pool or spa water is prohibited.
- D. The addition of gaseous disinfectant directly into a public or semipublic swimming pool is prohibited. The addition of dry or liquid disinfectant directly into a public or semipublic swimming pool or spa for routine disinfection is prohibited. This prohibition does not prohibit the use of liquid or dry disinfectants for shock treatment of a swimming pool or spa. A chlorine gas disinfection system shall not be used for the disinfection of water in a public or semipublic spa.
- E. A common chlorine gas disinfection system may be utilized in separate swimming pools if separate metering and feeding devices are provided for each swimming pool.
- F. If gaseous chlorine is used for disinfection, the following shall be provided:
1. The chlorinator, chlorine cylinders, and associated chlorination equipment shall be located in a separate well ventilated enclosure at or above ground level. The enclosure shall be reasonably gas-tight, noncombustible, and corro-

sion-resistant. The door of the enclosure shall open to the outside and shall not open directly toward the swimming pool.

2. If chlorination equipment is placed in a room, then an exhaust fan or gravity ventilation system shall be provided. Mechanical exhausters shall take suction 6 inches or less above the floor and discharge through corrosion-resistant louvers to a safe outside location. A gravity ventilation system shall be designed and constructed to discharge to the outside from floor level. Fresh air intakes shall be located no closer than 3 feet above the ventilation discharge. Chlorine room exhausts shall be directed away from the swimming pool to an area which is normally unoccupied. Chlorine room fans shall be capable of completely changing the air in the room at least once a minute.
 3. Electrical switches to control lighting and ventilation in the chlorine room shall be located on the outside of the enclosure and adjacent to the door.
 4. Chlorine cylinders shall be kept in an upright position and securely anchored to prevent them from falling. Chlorine cylinders may be stored indoors or out. If stored outside, chlorine cylinders shall not be stored in direct sunlight. Chlorine cylinders shall not be stored near an elevator, ventilation system, or heat source.
 5. A warning sign shall be placed on the outside of the door to the chlorine room which cautions persons of the danger of chlorine gas within the enclosure. The warning shall be in letters 3 inches high or larger. The door to the chlorine room shall be provided with a shatter resistant inspection window.
 6. Chlorinators shall be a solution-feed type, capable of delivering chlorine at its maximum rate without releasing chlorine gas to the atmosphere. Chlorinators shall be designed to prevent the backflow of water into the chlorine solution container.
- G. Granular, tablet, stick, and other forms of dry disinfectant shall be fed by an adjustable automatic feeding device.
- H. Disinfection equipment and chemical feeders shall comply with the requirements set forth in American National Standard/NSF International Standard 50, "Circulation System Components and Related Materials for Swimming Pools, Spas/Hot Tubs," NSF International, 3475 Plymouth Road, P.O. Box 130140, Ann Arbor, Michigan [revised July, 1996, and no future editions] which is incorporated by reference and on file with the Office of the Secretary of State and the Department.
- I. If a chemical feeder is used, it shall be installed to inject solution downstream from the filter and the heater. An erosion-type feeder may be installed to feed solution to the suction side of the pump. A chemical feeder shall be wired so it cannot operate unless the filter pump is running.

Historical Note

Adopted effective February 19, 1998 (Supp. 98-1).

R18-5-235. Cross-Connection Control

- A. Cross-connections between the distribution system of a public water system and the water circulation system of a public or semipublic swimming pool or spa are prohibited.
- B. Potable water for make-up water purposes may be introduced into a public or semipublic swimming pool or spa in any of the following ways:
1. Through an over-the-rim spout with an air-gap of at least twice the diameter of the pipe and not less than 6 inches above the overflow level. If an over-the-rim spout is used, it shall be located so that it does present a tripping hazard. The open end of an over-the-rim spout shall have no

sharp edges and shall not protrude more than 2 inches beyond the edge of the swimming pool or spa wall;

2. Through a float controlled make-up water feed tank with an air gap of at least 3 inches above the overflow level; or
3. Through a submerged inlet that is protected against back-siphonage by at least a pressure vacuum breaker that is installed so that the bottom of the backflow prevention assembly is a minimum of 12 inches above the level of the coping.

Historical Note

Adopted effective February 19, 1998 (Supp. 98-1).

R18-5-236. Disposal of Filter Backwash, Wasted Swimming Pool or Spa Water, and Wastewater

All sewage from plumbing fixtures, including urinals, toilets, lavatories, showers, drinking fountains, floor drains, and other sanitary facilities shall be disposed of in a sanitary manner. Filter backwash and wasted swimming pool or spa water shall be discharged into a sanitary sewer through an approved air gap, an approved subsurface disposal system, or by other means that are approved by the Department. The method of disposal shall comply with applicable disposal requirements established by a county, municipal, or other local authority. There shall be no direct physical connection between the sewer system and the water circulation system of a public or semipublic swimming pool or spa.

Historical Note

Adopted effective February 19, 1998 (Supp. 98-1).

R18-5-237. Lifeguard Chairs

Each public swimming pool shall have at least one elevated lifeguard chair for each 3,000 square feet of pool surface area or fraction thereof. At least one lifeguard chair shall be located close to the deep area of the swimming pool and shall provide a clear, unobstructed view of the swimming pool bottom. If a public swimming pool is provided with more than one lifeguard chair or the width of the public swimming pool is 45 feet or more, then lifeguard chairs shall be located on each side of the public swimming pool.

Historical Note

Adopted effective February 19, 1998 (Supp. 98-1).

R18-5-238. Lifesaving and Safety Equipment

- A. Public and semipublic swimming pools shall have lifesaving and safety equipment that is conspicuously and conveniently located and maintained ready for immediate use at all times.
- B. Each public or semipublic swimming pool shall have one ring buoy or a similar flotation device. Each ring buoy or flotation device shall be attached to 50 feet of 1/4 inch rope.
- C. Each semipublic and public swimming pool shall have at least one shepherd crook that is mounted on a rigid 16-foot pole.

Historical Note

Adopted effective February 19, 1998 (Supp. 98-1).

R18-5-239. Rope and Float Lines

A rope and float line shall be installed across each public swimming pool on the shallow side of the break in grade between the shallow and deep portions of the pool [that is, within 1 to 2 feet of the point where the floor slope begins to exceed 1 foot in 10 feet]. The rope shall be a minimum of 3/4 inch in diameter and supported by floats spaced at intervals not greater than 7 feet. The rope and float line shall be securely fastened to wall anchors that are made of corrosion-resistant materials. The wall anchors shall be recessed or have no projection that constitutes a hazard when the float line is removed.

Historical Note

Adopted effective February 19, 1998 (Supp. 98-1).

R18-5-240. Barriers

- A. A public swimming pool or spa and deck shall be entirely enclosed by a fence, wall, or barrier that is at least 6 feet high. A semipublic swimming pool or spa and deck shall be entirely enclosed by a fence, wall, or barrier that is at least 5 feet high. The height of the fence, wall, or barrier shall be measured on the side of the barrier which faces away from the swimming pool or spa.
- B. Fences or walls shall:
 1. Be constructed to afford no external handholds or footholds;
 2. Be of materials that are impenetrable to small children;
 3. Have no openings or spacings of a size that a spherical object 4 inches in diameter can pass through; and
 4. Be equipped with a gate that opens outward from the swimming pool or spa. The gate shall be equipped with a self-closing and self-latching closure mechanism or a locking closure located at or near the top of the gate, on the pool side of the gate, and at least 54 inches above the floor.
- C. The distance between the horizontal components of a fence shall not be less than 45 inches apart. The horizontal members shall be located on the interior side of the fence. Spacing or openings between vertical members shall be of a size that a spherical object 4 inches in diameter cannot pass through.
- D. The maximum mesh size for a wire mesh or chain link fence shall be a 1 3/4 inches square.
- E. Masonry or stone walls shall not contain indentations or protrusions except for normal construction tolerances and tooled masonry joints.
- F. If a wall of a building serves as part of the barrier around a public or semipublic swimming pool or spa, there shall be no direct access to the swimming pool or spa through the wall except as follows:
 1. Windows leading to the swimming pool or spa area shall be equipped with a screwed-in place wire mesh screen or a keyed lock that prevents opening the window more than 4 inches.
 2. A hinged door leading to the swimming pool or spa area shall be self-closing and shall have a self-latching device. The release mechanism of the self-latching device shall be located at least 54 inches above the floor.
 3. If an additional set of doors is required by the fire code allowing access to the swimming pool or spa, they shall be self-closing and self-latching, equipped with panic bars no less than 54 inches from the floor to the bottom of the bar and designated "For Emergency Use Only."
 4. Sliding doors leading to the swimming pool or spa area are prohibited except for sliding doors that are self-closing and self-latching.
- G. If a barrier is composed of a combination concrete masonry unit and wrought-iron, the wrought iron portion shall be installed flush with the outside vertical surface of the concrete masonry unit. The space between the wrought iron and the concrete masonry unit shall be 1/2 inch or less. The vertical members of the wrought iron shall be spaced 4 inches on center.
- H. Filtration, disinfection, and water circulation equipment shall be enclosed by a wall or fence.

Historical Note

Adopted effective February 19, 1998 (Supp. 98-1).

R18-5-241. Public Swimming Pools; Bathhouses and Dressing Rooms

- A. Separate dressing rooms shall be provided for each sex. Dressing rooms shall be equipped with baskets or other checking facilities.
- B. All entrances to and exits from the dressing rooms shall be effectively screened to interrupt the line of sight of persons outside the dressing rooms.
- C. Walls and partitions of dressing rooms, locker rooms, toilets, and showers shall be light colored, smooth, nonabsorbent, and easily cleanable. Concrete or pumice blocks used for interior wall construction in these locations shall be finished and sealed to provide a smooth and easily cleanable surface. Partitions shall be designed so that a waterway is provided between partitions and the floor to permit thorough cleaning of the walls and floor areas with hoses and brooms.
- D. Floors shall be of nonslip construction, free of cracks or openings, and sloped to adequate drains so the surface will be free of standing water and puddles. Floors shall be sloped not less than 1/4 inch per foot toward the drains to ensure positive drainage. Carpeting is prohibited.
- E. All furniture shall be of simple character and easily cleanable. Locker compartments, partitions, booths, furniture, and other appurtenances in dressing rooms shall be so installed or raised above the floor to permit washing down the dressing rooms and bathhouse interiors.
- F. An adequate number of hose bibs shall be provided for washing down the dressing room or bathhouse interior.
- G. Dressing rooms, toilets, and showers shall be provided with adequate lighting and ventilation.
- H. Toilet facilities shall be provided for each sex. For male users, there shall be one toilet and one urinal for each 100 bathers or fraction thereof. For female users, there shall be one toilet for each 50 bathers, or fraction thereof. In no case shall less than two toilets be provided for female users. Sanitary napkin dispensers shall be installed in toilet or shower areas designated for female users.
- I. Shower and handwashing facilities with hot and cold water and soap shall be provided for each dressing room. Hot and cold water shall be provided at all shower heads. The water heater and thermostatic mixing valve shall be inaccessible to users and shall be capable of providing two gallons per minute of 90°F water to each shower head. A minimum of two shower heads shall be provided in each dressing room. Each dressing room shall have one shower head for each 50 bathers or fraction thereof.
- J. One lavatory with an unbreakable mirror shall be provided in each dressing room for the first 100 users. An additional lavatory and unbreakable mirror shall be provided for each additional 100 users or fraction thereof. Soap dispensers for providing either liquid or powdered soap shall be provided at each lavatory. Soap dispensers shall be made of metal or plastic with no glass permitted.

Historical Note

Adopted effective February 19, 1998 (Supp. 98-1).

R18-5-242. Semipublic Swimming Pools; Toilets and Lavatories

- A. A bathroom with a minimum of one toilet shall be provided for each sex.
- B. Each bathroom shall have at least one lavatory. Soap dispensers for providing either liquid or powdered soap shall be provided at each lavatory. Soap dispensers shall be made of metal or plastic with no glass permitted.
- C. An establishment that operates a semipublic swimming pool or spa and provides a private room with a toilet and lavatory for

bathers shall be deemed to have complied with the requirements of this Section.

Historical Note

Adopted effective February 19, 1998 (Supp. 98-1).

R18-5-243. Drinking Water Fountains

Drinking water from an approved source and dispensed through one or more drinking fountains shall be located on the deck of each public swimming pool or spa.

Historical Note

Adopted effective February 19, 1998 (Supp. 98-1).

R18-5-244. Wading Pools

- A. A wading pool is a type of public or semipublic swimming pool. The design criteria prescribed in this Article for public or semipublic swimming pools apply, except as provided in this Section.
- B. A wading pool shall be physically set apart from public and semipublic swimming pools.
 - 1. A wading pool shall be separated from a public swimming pool by a minimum 4-foot high fence or partition with a self-closing, self-latching gate.
 - 2. A wading pool shall be separated from a semipublic swimming pool by at least 4 feet of deck.
 - 3. A wading pool shall not be located adjacent to the deep area of a public or semipublic swimming pool.
- C. A wading pool shall have a maximum depth of 24 inches. Water depths may be reduced from the stated maximums and brought to zero at the most shallow point of the wading pool.
- D. The floor of a wading pool shall be uniform with a maximum slope of 1 foot of fall in 10 feet. The floor of a wading pool shall have a slip-resistant surface.
- E. All wading pools shall have separate equipment for water circulation and disinfection. There shall be no cross-connection between the water circulation system of a wading pool and a public or semipublic swimming pool. The water in a wading pool shall have a maximum turnover cycle of 1 hour.
- F. At least two main drains shall be provided at the deepest point in a wading pool. Each main drain shall be covered by a grate which cannot be removed by users. The openings in the grate shall have a total area that is at least four times the area of the drain pipe. In the alternative, a wading pool may be equipped with a single gravity drain which discharges to a surge tank.
- G. Surface skimmers shall be provided on the basis of at least one skimmer for each 200 square feet of wading pool surface area. Surface skimmer flow rates shall be the same as required for public and semipublic swimming pools. Where only one skimmer is provided, the main drain may be connected through the skimmer.
- H. Return inlets shall be provided and arranged to produce a uniform circulation of water and maintain a uniform disinfectant residual throughout the wading pool. Where three or more return inlets are required, they shall be on a closed loop piping system.
- I. Suction outlets in a wading pool shall have plumbing provisions so as to relieve any possibility of entrapping suction.
- J. Gaseous chlorine shall not be used for the disinfection of wading pool water.
- K. A drinking fountain at a height convenient to small children or a drinking fountain with a raised step shall be provided in the area of the wading pool.

Historical Note

Adopted effective February 19, 1998 (Supp. 98-1).

R18-5-245. Timers for Public and Semipublic Spas

The timer for a public or semipublic spa which controls the hydrotherapy jets shall be located at least 5 feet from the spa and shall have a maximum time limit of 15 minutes.

Historical Note

Adopted effective February 19, 1998 (Supp. 98-1).

R18-5-246. Air blower and Air Induction Systems for Public and Semipublic Spas

An air blower system or air induction system for a public or semipublic spa shall comply with the following requirements:

1. The system shall prevent water backflow which could cause an electrical shock hazard.
2. Air intake sources shall not introduce water, dirt, or contaminants into the spa.
3. The system shall be properly sized for a commercial spa application.
4. If the air blower is installed within an enclosure or indoors, then adequate ventilation shall be provided.
5. Integral air passages shall be pressure tested and shall provide structural integrity to a value of 1 1/2 times the intended working pressure.

Historical Note

Adopted effective February 19, 1998 (Supp. 98-1).

R18-5-247. Water Temperature in Public and Semipublic Spas

The temperature of heated water coming into a public or semipublic spa shall not exceed 104°.

Historical Note

Adopted effective February 19, 1998 (Supp. 98-1).

R18-5-248. Special Use Pools

- A. A person who intends to construct a special use pool shall notify the Department and provide plans, specifications, and a description of the intended use of the special use pool. The Department shall use best professional judgment in approving a special use pool, taking into consideration the intended use of the pool, the conditions under which it will operate, and the safety of users. The Department may consider the design requirements prescribed by an official sanctioning athletic body such as the National Collegiate Athletic Association [NCAA], National Federation of State High School Associations [NFSHSA], U.S. Swimming, U.S. Diving, or the Internationale de Natation Amateur [FINA] in using best professional judgement to approve a special use pool that is intended for competitive swimming and diving.
- B. A special use pool that is designed with exercise or training bars in the pool shall be restricted to the special use when the bars are located in the pool. The bars shall:
 1. Be constructed of durable and corrosion-resistant material;
 2. Be sealed, welded shut, or capped at both ends to prevent retention of water within the bars;
 3. Bars may be removable. Removable bars shall be wedge anchored in place and the anchors shall be covered. Water-tight anchor plugs [95% efficiency] shall be provided when the bars are removed; and
 4. Extend not more than 4 inches from the side of the pool into the water. The minimum clear opening from the inside of the bar to the side of the swimming pool shall not be less than 2 inches.
- D. A special use pool that is designed with a ramp shall comply with the following:
 1. The ramp shall be constructed of slip-resistant material;
 2. The slope of the ramp shall not exceed 1 foot in 12 feet;
 3. The width of the ramp shall be at least 3 feet;
 4. The ramp shall have a level platform at the top and the bottom of the ramp;
 5. The ramp shall be equipped with at least a 3 1/2 foot high guardrail installed on the deck and extending the length of the ramp;
 6. The ramp shall be constructed with return inlets located on the pool and ramp walls along the length of the ramp.

Historical Note

Adopted effective February 19, 1998 (Supp. 98-1).

R18-5-249. Variances

- A. The Department may grant a variance from a requirement prescribed in this Article upon a demonstration by the applicant that an alternative design, material, appurtenance, or technology is equivalent to a requirement prescribed in this Article. If a variance is granted, it shall be conditioned upon the applicant's use of the approved alternative.
- B. The Department shall not grant a variance that results in an unreasonable risk to the health of swimming pool or spa users.
- C. The applicant shall request a variance in writing. A variance request shall contain the following information:
 1. Identification of the requirement prescribed in this Article for which a variance is requested;
 2. Explanation of the reasons why the applicant cannot comply with the requirement;
 3. A complete description of the alternative design, material, or technology to be installed and used in the swimming pool or spa, including design plans, specifications, and a description of the cost;
 4. A demonstration that the alternative design, material, or technology to be installed and used in the swimming pool or spa is equivalent to the requirement in this Article and will not result in an unreasonable risk to users; and
 5. A statement that the applicant will perform reasonable requirements prescribed by the Department that are conditions of a variance.
- D. The applicant shall submit a request for a variance with an application for design approval. The Department shall determine whether the application for design approval and the variance request are complete. Within 30 days after the date of the submittal of the application for design approval and the variance request, the Department shall issue a written notice to the applicant that states that the request for a variance and the application for design approval are complete or which states that the request for a variance or the application for design approval is incomplete and identifies specific information deficiencies in the application for design approval or the variance request.
- E. The Department may convene an advisory committee consisting of representatives of public and semipublic swimming pool and spa owners, public and semipublic swimming pool and spa building contractors, professional engineers, and county environmental and health departments to make a recommendation on a variance request.
- F. If the Department grants the request for a variance, the Department shall identify the requirement for which the variance is granted, specify any conditions to the grant of a variance, and issue a design approval. If the Department denies the request for a variance, the Department shall issue a notice of intent to deny the request for a variance to the applicant. The notice shall state the reasons for the denial of the request for a variance and shall include a description of the applicant's right to request a hearing on the denial of the variance request pursuant to A.R.S. § 41-1092.03 and to request an informal settlement

conference pursuant to A.R.S. § 41-1092.06. If the Department denies a request for a variance, the Department may either deny the application for design approval or issue a design approval that requires compliance with the requirement for which the variance is requested.

- G. In considering a request for a variance from a requirement prescribed in this Article, the Director shall consider the following factors:
 1. The intended use of the public or semipublic swimming pool or spa;
 2. The safety of the alternative design, material, or technology for which a variance is requested; and
 3. The cost and other economic considerations associated with requiring compliance with the requirement prescribed in this Article as compared to the alternative for which a variance is requested.

Historical Note

Adopted effective February 19, 1998 (Supp. 98-1).

R18-5-250. Inspections

- A. An inspector from the Department, upon presentation of credentials, may enter into any public or semipublic swimming pool or spa to determine compliance with this Article. The inspector may inspect records, equipment, and facilities; take photographs; and take other action reasonably necessary to determine compliance with this Article.

- B. The owner or manager of a public or semipublic swimming pool or spa may accompany the inspector during an inspection.
- C. An inspector from the Department may inspect a public or semipublic swimming pool or spa without giving prior notice of the inspection to the owner or operator of the swimming pool or spa.

Historical Note

Adopted effective February 19, 1998 (Supp. 98-1).

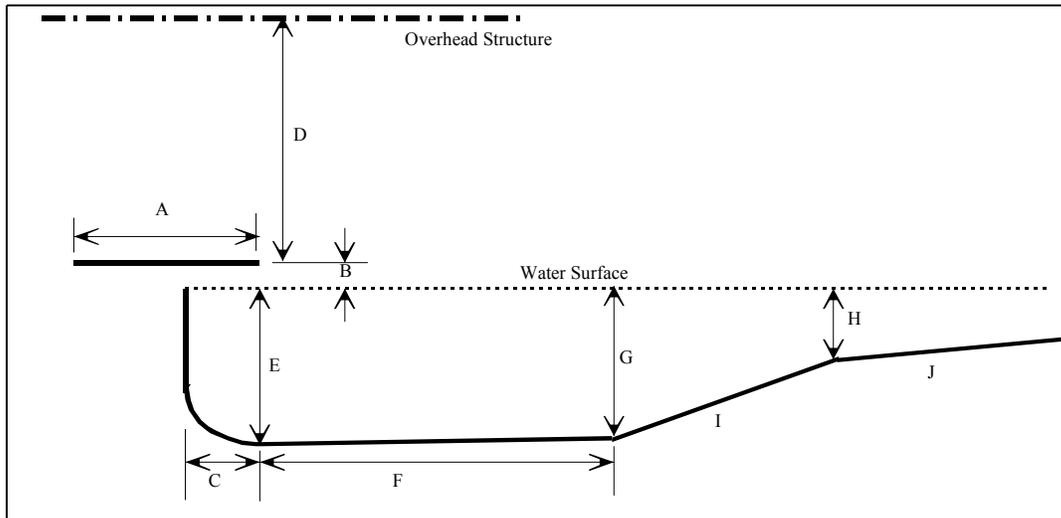
R18-5-251. Enforcement

- A. If an inspector finds a violation of this Article, the Department may issue a notice of violation to the owner of a public or semipublic swimming pool or spa. A notice of violation shall state specifically the nature of the violation and shall allow a reasonable time for the owner to correct the violation.
- B. If the Director has reasonable cause to believe that a person has constructed a public or semipublic swimming pool or spa in violation of this Article, the Director may order the closure of the swimming pool or spa by issuing a cease and desist order by following the procedures for abatement of environmental nuisances in A.R.S. § 49-142.

Historical Note

Adopted effective February 19, 1998 (Supp. 98-1).

Illustration A. Diving Well Dimensions for Swimming Pools



Note: This profile does not apply to a special use pool that is designed for competitive diving.

A. Maximum length of diving board	10 feet
B. Maximum height of board above the water	20 inches
C. Overhang of the board from wall	Minimum: 2 feet Maximum: 3 feet
D. Minimum distance to an overhead structure	15 feet
E. Minimum depth of water at the plummet	9 feet
F. Distance from plummet to start of upslope	18 feet
G. Minimum depth of water at start of the upslope	Depth of water at plummet minus 6 inches

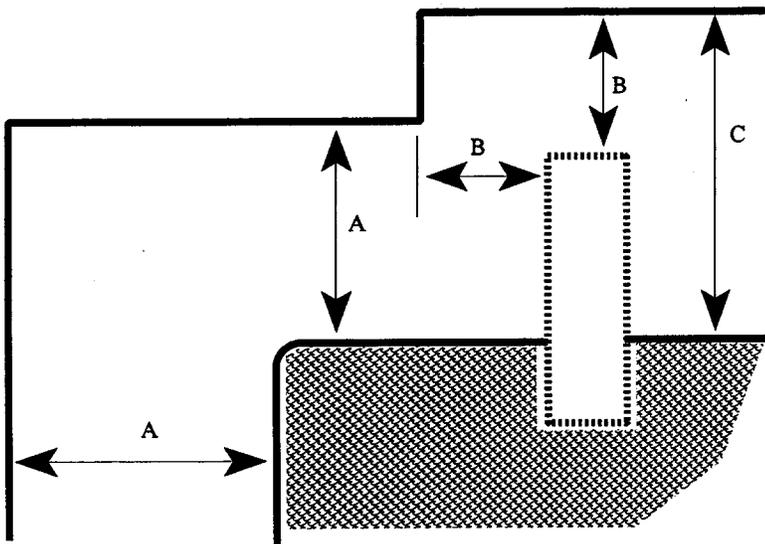
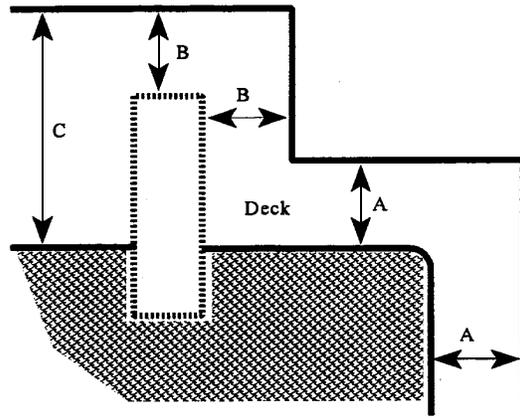
H. Depth of water at the breakpoint	Public swimming pool: 5 feet Semipublic swimming pool: 4 feet
I. Maximum slope: breakpoint towards deep end	1 foot of fall in 3 feet
J. Slope of bottom in shallow area	1 foot of fall in 10 feet
Minimum width of pool in diving area	20 feet
From plummet to pool wall at the side	10 feet

Historical Note

Adopted effective February 19, 1998 (Supp. 98-1).

Illustration B. Minimum Distance Requirements for Decks

Dimension	Public (in Feet)	Semipublic (in feet)
A	10	4
B	5	4
C	15	11



Historical Note

Adopted effective February 19, 1998 (Supp. 98-1).

ARTICLE 3. WATER QUALITY MANAGEMENT PLANNING

R18-5-301. Definitions

In addition to the definitions established in R18-9-101, the following terms apply to this Article:

1. "Certified Areawide Water Quality Management Plan" means a plan prepared by a designated Water Quality Management Planning Agency under Section 208 of the Federal Water Pollution Control Act (P.L. 92-500) as amended by the Water Quality Act of 1987 (P.L. 100-4), certified by the Governor or the Governor's designee, and approved by the United States Environmental Protection Agency.
2. "Designated management agency" means those entities designated in a Certified Areawide Water Quality Management Plan to manage sewage treatment facilities and sewage collection systems in their respective area.
3. "Designated water quality planning agency" means the single representative organization designated by the Governor under Section 208 of the Federal Water Pollution Control Act (P.L. 92-500) as amended by the Water Quality Act of 1987 (P.L. 100-4) as capable of developing effective areawide sewage treatment management plans for the respective area. The state acts as the planning agency for those non-tribal portions of the state for which there is no designated water quality planning agency.
4. "Facility Plan" means the plans, specifications, and estimates for a proposed sewage treatment facility, prepared under Section 201 and 203 of the Federal Water Pollution Control Act (P.L. 92-500) as amended by the Water Quality Act of 1987 (P.L. 100-4), and submitted to the Department by and for a designated management agency.
5. "General Plan" means a municipal statement of land-development policies that may include maps, charts, graphs, and text that list objectives, principles, and standards for local growth and development enacted under state law.
6. "Service area" means the geographic region specified for a designated management agency by the applicable Certified Areawide Water Quality Management Plan, Facility Plan, or General Plan.
7. "State water quality management plan" means the following elements:
 - a. Certified Areawide Water Quality Management Plans and amendments;
 - b. Water quality rules and laws;
 - c. Final total maximum daily loads approved by the United States Environmental Protection Agency for impaired waters;
 - d. Water quality priorities established by the Department;
 - e. Intergovernmental agreements between the Department and a designated water quality planning agency or a designated management agency; and
 - f. Active management area plans adopted by the Department of Water Resources.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 559, effective January 2, 2001 (Supp. 01-1).

R18-5-302. Certified Areawide Water Quality Management Plan Approval

A designated water quality planning agency shall submit a proposed Certified Areawide Water Quality Management Plan or plan

amendment to the Director for review and approval. Upon approval, the Governor or the Governor's designee shall:

1. Certify that the plan or plan amendment is incorporated into and is consistent with the state water quality management plan, and
2. Submit the plan or plan amendment to the United States Environmental Protection Agency for approval.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 559, effective January 2, 2001 (Supp. 01-1).

R18-5-303. Determination of Conformance

All sewage treatment facilities, including an expansion of a facility, shall, before construction, conform with the Certified Areawide Water Quality Management Plan, Facility Plan, and General Plans as specified in subsections (1) and (2).

1. The Department shall make the determination of conformance if the sewage treatment facility or expansion of the facility conforms with the Certified Areawide Water Quality Management Plan and Facility Plan that prescribe a configuration for sewage treatment and sewage collection system management by a designated management agency within the service area.
2. If the condition specified in subsection (1) is not met, the Department shall make the determination of conformance as follows:
 - a. If no Facility Plan is applicable and a Certified Areawide Water Quality Management Plan as described in subsection (1) is available, the Department shall rely on the Certified Areawide Water Quality Management Plan for the determination of conformance.
 - b. If no Certified Areawide Water Quality Management Plan as described in subsection (1) is available, the Department shall make the determination of conformance based on conformance with applicable General Plans and after conferring with the designated water quality planning agency for the area and any responsible and affected governmental unit.

Historical Note

New Section adopted by final rulemaking at 7 A.A.R. 559, effective January 2, 2001 (Supp. 01-1).

ARTICLE 4. SUBDIVISIONS

R18-5-401. Definitions

In this Article unless the context otherwise requires:

1. "Approved" or "approval" means approved in writing by the Department.
2. "Condominium" means a subdivision established as a horizontal property regime pursuant to A.R.S. § 33-551 et seq.
3. "Department" means the Department of Environmental Quality or its designated representative.
4. "Garbage" means putrescible animal and vegetable wastes resulting from the handling, preparation, cooking and consumption of food.
5. "Refuse" means all putrescible and nonputrescible solid wastes (except body wastes), including garbage, rubbish, ashes, street cleanings, dead animals, abandoned automobiles, and solid market and industrial wastes.
6. "Subdivision" has the meaning defined in A.R.S. § 32-2101.

Historical Note

Correction in subsection (E) citation to A.R.S. should have read § 32-2101. Amended effective June 21, 1978 (Supp. 78-3). Former Section R9-8-1011 renumbered without change as Section R18-5-401 (Supp. 89-2).

R18-5-402. Approval of plans required

- A. No subdivision or portion thereof shall be sold, offered for sale, leased or rented by any corporation, company or person, or offered to the public in any manner, and no permanent building shall be erected thereon until plans and specifications for the water supply, sewage disposal and method of garbage disposal to be provided in or to serve such subdivision shall have been submitted to and approved by the Department.
- B. The plans of any proposed water supply and sewage disposal system shall be submitted in quadruplicate on a plat of the subdivision as recorded, or as will be recorded, in the office of the county recorder.

Historical Note

Former Section R9-8-1012 renumbered without change as Section R18-5-402 (Supp. 89-2).

R18-5-403. Application for approval

- A. An application for approval, prepared in duplicate on forms furnished by the Department, shall be filed at the time the plans are submitted for approval. The form shall be completely filled out unless indicated otherwise.
- B. The distance to the nearest public water supply main and to a sewer main of a municipal or community system shall be given.

Historical Note

Former Section R9-8-1013 renumbered without change as Section R18-5-403 (Supp. 89-2).

R18-5-404. Size of lots

The minimum size lot approved by the Department will be governed largely by the area necessary for the safe accommodation of individual wells and/or sewage disposal systems. Where both the water supply and sewage disposal system must be developed on the same lot, the minimum size shall be at least one acre, excluding streets, alleys and other rights-of-way. Where water from a central system is provided for residential uses, the lot shall be sufficient to accommodate the sewage disposal system and provide for at least 100 percent expansion of the system based on a four-bedroom house within the bounds of the property allowing a minimum of five feet distance to the property lines. Where lots are zoned for commercial uses, the lot shall be sufficient to accommodate the sewage disposal system and provide for at least 100 percent expansion of the system within the bounds of the property allowing a minimum of five feet distance to the property lines.

Historical Note

Former Section R9-8-1014 renumbered without change as Section R18-5-404 (Supp. 89-2).

R18-5-405. Responsibility of subdivider

Where plans for a subdivision include a public water supply system, or public sewerage system, it shall be the responsibility of the subdivider to provide the facilities to each lot in the subdivision prior to human occupancy. The installation of such facilities shall be in accordance with plans, or any revisions thereof, approved by the Department.

Historical Note

Former Section R9-8-1015 renumbered without change as Section R18-5-405 (Supp. 89-2).

R18-5-406. Public water systems

- A. Where water from an approved public water system is proposed for use in a subdivision, the inside diameter, length, and location of all proposed and existing water mains and valves necessary to serve each and every lot shall be shown on the subdivision plat. If the existing main to which a connection will be made is not immediately adjacent to the property, the direction and distance shall be indicated on the plat by an arrow or other suitable means.
- B. A letter shall be obtained and submitted with the application for approval of the subdivision from responsible officials of the water system indicating that an agreement has been reached to supply water to each individual lot in the subdivision.
- C. Where the owner of a subdivision, or other interested person, firm, company or corporation, proposes to develop a source or sources of supply and to construct a distribution system to furnish water to the subdivision, either free or for charge, complete details of the proposed water system including plans and specifications shall be furnished. Department approval of the supply and proposed system shall first be obtained before an approval for the sale of lots will be granted. The installation of such facilities shall be in accordance with the plans, and any revisions thereof, approved by the Department.
- D. Proposed water supply and distribution systems shall comply with A.A.C. Title 18, Chapter 4, Article 2, except those distribution lines which are a common element of a condominium shall be exempt from A.A.C. R18-4-234.
- E. Where water from an approved public water system is proposed for use in a subdivision, the Department shall issue a Certificate of Approval for Sanitary Facilities for a Subdivision only if the applicant has complied with subsections (A) and (B) of this Section and the public water system is either:
 1. in compliance with the provisions of A.A.C. Title 18, Chapter 4, Article 2; or
 2. making satisfactory progress toward compliance with the provisions of A.A.C. Title 18, Chapter 4, Article 2 under a schedule approved by the Department.
- F. The Department shall revoke the Certificate of Approval for Sanitary Facilities for a Subdivision and notify the Department of Real Estate of such action if the public water system in use by the subdivision is creating an environmental nuisance pursuant to A.R.S. § 49-141 and is neither:
 1. is compliance with the provisions of A.A.C. Title 18, Chapter 4, Article 2; nor
 2. making satisfactory progress toward compliance with the provisions of A.A.C. Title 18, Chapter 4, Article 2 under a schedule approved by the Department.

Historical Note

Amended effective June 21, 1978 (Supp. 78-3). Former Section R9-8-1021 renumbered without change as Section R18-5-406 (Supp. 89-2). Amended effective July 25, 1990 (Supp. 90-3).

R18-5-407. Public sewerage systems

- A. Where a public sewerage system is already in existence, or if sewers are proposed and have been approved by the Department, it shall be necessary to show lines indicating the approximate location and size of the sewers on the subdivision plat.
- B. Where the proposed sewers will connect to an existing public sewerage system, a letter from officials of the system shall be required stating that acceptable plans have been submitted and that the subdivider has been granted permission to connect to and become a part of the public sewerage system.
- C. Proposed sewage disposal facilities shall comply with A.A.C. Title 18, Chapter 9, Article 8, except those drain lines which

are a common element of a condominium shall be exempt from R18-5-811.

- D.** Where a public sewerage system is already in existence, or if sewers are proposed and have been approved by the Department, the Department shall issue a Certificate of Approval for Sanitary Facilities for a Subdivision only if the applicant has complied with subsections (A) and (B) of this Section and the public sewerage system is either:
1. in compliance with the provisions of A.A.C. Title 18, Chapter 9, Article 8; or
 2. making satisfactory progress toward compliance with the provisions of A.A.C. Title 18, Chapter 9, Article 8 under a schedule approved by the Department.
- E.** The Department shall revoke the Certificate of Approval for Sanitary Facilities for a Subdivision and notify the Department of Real Estate of such action if the public sewerage system in use by the subdivision is creating an environmental nuisance pursuant to A.R.S. § 49-141 and is neither:
1. In compliance with the provisions of A.A.C. Title 18, Chapter 9, Article 8; nor
 2. Making satisfactory progress toward compliance with the provisions of A.A.C. Title 18, Chapter 9, Article 8 under a schedule approved by the Department.

Historical Note

Amended effective June 21, 1978 (Supp. 78-3). Former Section R9-8-1026 renumbered without change as Section R18-5-407 (Supp. 89-2). Amended effective July 25, 1990 (Supp. 90-3).

R18-5-408. Individual sewage disposal systems

- A.** Recommendations are found in the engineering bulletins of the Department and such additional requirements as may be provided by local health departments to assist in approval regarding the design, installation and operation of individual sewage disposal systems. Copies of these bulletins may be obtained from the Department.
- B.** Where soil conditions and terrain features or other conditions are such that individual sewage disposal systems cannot be expected to function satisfactorily or where groundwater or soil conditions are such that individual sewage disposal systems may cause pollution of groundwater, they are prohibited.
- C.** Where such installations may create an unsanitary condition or public health nuisance, individual sewage disposal systems are prohibited.
- D.** The use of cesspools is prohibited.
- E.** Where an individual sewage disposal system is proposed, the following conditions shall be satisfied:
1. A geological report shall be made by an engineer, geologist or other qualified person. The geological report shall include results from percolation tests and boring logs obtained at locations designated by the county health departments. There shall be a minimum of one percolation test and boring log per acre, or one percolation test and boring log per lot where lots are larger than one acre, except when it can be shown by submission of other reliable data that soil conditions are such that individual disposal systems could reasonably be expected to function properly on each lot in the proposed subdivision. The Department may require additional tests when it deems necessary. The approval of a subdivision, based upon such reports, shall not extend to the plat if it is further subdivided or lot lines are substantially relocated.
 2. Results of all tests shall be submitted to the Department and the local health department for review and approval

of the subdivision for the use of individual sewage disposal systems.

3. Such approval must be obtained in writing from the local health department and a copy of the approval shall be submitted to the Department with the subdivision application for approval.

Historical Note

Former Section R9-8-1027 renumbered without change as Section R18-5-408 (Supp. 89-2).

R18-5-409. Refuse disposal

- A.** The storage, collection, transportation and disposal of refuse and other objectionable wastes shall be governed by A.A.C. Title 18, Chapter 8, Article 5.
- B.** Where an approved community or private refuse collection service is available, arrangements shall be made to have this service furnished to the subdivision. A letter, from the community or private collection company, stating that the collection service will be made available to the subdivision, is required.
- C.** Where refuse collection service is not available, it will be the responsibility of the subdivider to notify each purchaser or tenant that the hauling of all refuse is an individual responsibility and that all refuse must be properly stored pending removal and disposed of at disposal areas specified in the plan approved by the Department.
- D.** Where a collection service or an existing approved disposal area is not available to the subdivision, a plan approval will not be granted unless a separate disposal area is provided by the subdivider or arrangements are made to utilize a new, conveniently located disposal area. Such arrangements shall include, but not be limited to, the written permission of the person responsible for the operation of the new site.

Historical Note

Former Section R9-8-1031 renumbered without change as Section R18-5-409 (Supp. 89-2).

R18-5-410. Condominiums

- A.** New water distribution lines and new wastewater drain lines which are to be used as a common element of a condominium and are not under the ownership and control of a public utility shall be constructed in accordance with applicable provisions of the Uniform Plumbing Code adopted by reference in A.A.C. R9-1-412(D), including the minimum standards for construction contained therein.
- B.** Plans to be submitted shall include inside diameter, length and location of all proposed and existing common usage water distribution lines and inside diameter, length, slope and location of all proposed and existing common usage wastewater drain lines necessary to serve each and every unit. Plans and specifications should be submitted with sufficient detail to indicate compliance with subsection (A) above.
- C.** Appropriate sections of the covenants shall be submitted that indicate adequate provisions have been made for the maintenance of water distribution lines and wastewater drain lines in common usage.
- D.** Approval of existing housing to be converted to condominiums is conditioned upon the water distribution system and wastewater drainage system being:
1. Approved in writing at the time of original construction by the local building inspection authority, or
 2. Currently operating under a permit issued by a local building inspection authority, or
 3. Certified to be adequate by an Arizona registered professional engineer who has affixed his signature and seal to as-built plans submitted for approval.

Historical Note

Adopted effective June 21, 1978 (Supp. 78-3). Former Section R9-8-1032 renumbered without change as Section R18-5-410 (Supp. 89-2).

R18-5-411. Violations

Any person, firm, company or corporation who offers for sale, lease or rent any tract of land contrary to these regulations shall be prosecuted in accordance with A.R.S. § 49-142 or as otherwise may be provided by law.

Historical Note

Adopted effective June 21, 1978 (Supp. 78-3). Former Section R9-8-1036 renumbered without change as Section R18-5-411 (Supp. 89-2). Amended effective April 2, 1990 (Supp. 90-2).

ARTICLE 5. MINIMUM DESIGN CRITERIA

Article 5, consisting of R18-5-501 through R18-5-509, recodified from 18 A.A.C. 4, Article 5 at 10 A.A.R. 585, effective January 30, 2004 (Supp. 04-1).

R18-5-501. Siting Requirements

To the extent practicable, a new public water system or an extension to an existing public water system shall be geographically located to avoid a site which is:

1. Subject to a significant risk from earthquakes, floods, fires, or other disasters which could cause a breakdown of the public water system or portion thereof; or
2. Within the flood plain of a 100-year flood, except for intake structures and properly protected wells.

Historical Note

Section recodified from R18-4-501 at 10 A.A.R. 585, effective January 30, 2004 (Supp. 04-1).

R18-5-502. Minimum Design Criteria

- A. A public water system shall be designed using good engineering practices. A public water system which is designed in a manner consistent with the criteria contained in Engineering Bulletin No. 10, "Guidelines for the Construction of Water Systems," issued by the Arizona Department of Health Services, May 1978 (and no future editions), which is incorporated herein by reference and on file with the Office of the Secretary of State, shall be considered to have been designed using good engineering practices. Other system designs shall be approved if the applicant can demonstrate that the system will function properly and may be operated reliably in compliance with this Chapter. Minimum design criteria which are not subject to modification are listed in this Section.
- B. A potable water distribution system shall be designed to maintain and shall maintain a pressure of at least 20 pounds per square inch at ground level at all points in the distribution system under all conditions of flow.
- C. Water and sewer mains shall be separated in order to protect public water systems from possible contamination. All distances are measured perpendicularly from the outside of the sewer main to the outside of the water main. Separation requirements are as follows:
 1. A water main shall not be placed:
 - a. Within 6 feet, horizontal distance, and below 2 feet, vertical distance, above the top of a sewer main unless extra protection is provided. Extra protection shall consist of constructing the sewer main with mechanical joint ductile iron pipe or with slip-joint ductile iron pipe if joint restraint is provided. Alternate extra protection shall consist of encasing both the water and sewer mains in at least 6 inches of

concrete for at least 10 feet beyond the area covered by this subsection (C)(1)(a).

- b. Within 2 feet horizontally and 2 feet below the sewer main.
2. No water pipe shall pass through or come into contact with any part of a sewer manhole. The minimum horizontal separation between water mains and manholes shall be 6 feet, measured from the center of the manhole.
3. The minimum separation between force mains or pressure sewers and water mains shall be 2 feet vertically and 6 feet horizontally under all conditions. Where a sewer force main crosses above or less than 6 feet below a water line, the sewer main shall be encased in at least 6 inches of concrete or constructed using mechanical joint ductile iron pipe for 10 feet on either side of the water main.
4. The separation requirements do not apply to building, plumbing, or individual house service connections.
5. Sewer mains (gravity, pressure, and force) shall be kept a minimum of 50 feet from wells unless the following conditions are met:
 - a. Water main pipe, pressure tested in place to 50 psi without excessive leakage, is used for gravity sewers at distances greater than 20 feet from water wells; or
 - b. Water main pipe, pressure tested in place to 150 psi without excessive leakage, is used for pressure sewers and force mains at distances greater than 20 feet from water wells. "Excessive leakage" means any amount of leakage which is greater than that permitted under the AWWA Standard applicable to the particular pipe material or valve type.
6. Requests for authorization to use alternate construction techniques, materials, and joints shall be reviewed by the Department, and such requests may be approved on a case-by-case basis.
- D. A public water system shall not construct or add to its system a well which is located:
 1. Within 50 feet from existing sewers unless the sewer main has been constructed in accordance with subsection (C)(5)(a) or (b) of this Section;
 2. Within 100 feet of any existing septic tank or subsurface disposal system;
 3. Within 100 feet of a discharge or activity which is required to obtain an Individual Aquifer Protection Permit, pursuant to A.R.S. §§ 49-241(A) through 49-251;
 4. Within 100 feet of an underground storage tank as defined in A.R.S. § 49-1001; or
 5. Within 100 feet of hazardous waste facilities operated by large quantity generators and treatment, storage, and disposal facilities regulated under the Arizona Hazardous Waste Management Act, A.R.S. § 49-921 et seq.

Historical Note

Section recodified from R18-4-502 at 10 A.A.R. 585, effective January 30, 2004 (Supp. 04-1).

R18-5-503. Storage Requirements

- A. The minimum storage capacity for a CWS or a noncommunity water system that serves a residential population or a school shall be equal to the average daily demand during the peak month of the year. Storage capacity may be based on existing consumption and phased as the water system expands.
- B. The minimum storage capacity for a multiple-well system for a CWS or a noncommunity water system that serves a residential population or a school may be reduced by the amount of the total daily production capacity minus the production from the largest producing well.

Historical Note

Section recodified from R18-4-503 at 10 A.A.R. 585, effective January 30, 2004 (Supp. 04-1).

R18-5-504. Prohibition on the Use of Lead Pipe, Solder, and Flux

Construction materials used in a public water system, including residential and non-residential facilities connected to the public water system, shall be lead-free as defined at R18-4-101. This Section shall not apply to leaded joints necessary for the repair of cast iron pipes.

Historical Note

Section recodified from R18-4-504 at 10 A.A.R. 585, effective January 30, 2004 (Supp. 04-1).

R18-5-505. Approval to Construct

A. The Department shall only approve an addition or a water main extension to a public water system that is in compliance with this Chapter or is making satisfactory progress towards compliance under a schedule approved by the Department. The Department shall approve a properly designed modification that can be expected to return a public water system to compliance.

B. A person shall not start to construct a new public water system, modify an existing facility, including an extension to an existing public water system, or make an alteration that will affect the treatment, capacity, water quality, flow, distribution, or operational performance of a public water system before receiving an Approval to Construct from the Department. Designing or consulting engineers may confer with the Department before proceeding with detailed designs of complex or innovative facilities. The following provisions shall apply:

1. An application for Approval to Construct, including the following documents and data, shall be submitted to the Department:
 - a. Detailed construction plans of the site and work to be done, presented in legible form and of sufficient scale, to establish construction requirements to facilitate effective review;
 - b. Complete specifications to supplement the plans;
 - c. A design report that describes the proposed construction and basis of design, provides design data and other pertinent information that defines the work to be done, and establishes the adequacy of the design to meet the system demand;
 - d. Analyses of a proposed new source of water that include:
 - i. Microbiological; physical; radiochemical; inorganic, organic, and volatile organic chemicals; and
 - ii. Microscopic particulates if the source meets the criteria of R18-4-301.01(A); and
 - e. Other pertinent data required to evaluate the application for Approval to Construct.
2. All plans, specifications, and design reports submitted for a public water system shall be prepared by, or under the supervision of, a professional engineer registered in Arizona and have the seal and signature of the engineer affixed to them, except that an engineer not registered in Arizona may design a water treatment plant or additions, modifications, revisions, or extensions, which include extensions to potable water distribution systems, if the total cost of the construction does not exceed \$12,500 for material, equipment, and labor, as verified by a cost estimate submitted with plan documents.

3. An existing public water system shall be exempt from the plan review requirements of this Article if the public water system is in compliance with this Chapter or is making satisfactory progress towards compliance under a schedule approved by the Department if the applicable structural revision, addition, extension, or modification:

- a. Has a project cost of \$12,500 or less; or
- b. Is made to a water line that:
 - i. Is not for a subdivision requiring plat approval by a city, town, or county;
 - ii. Has a project cost of more than \$12,500 but less than \$50,000; and
 - iii. Has a design that is sealed and signed by a professional engineer registered in Arizona and the construction of which is reviewed for conformance with the design by a professional engineer registered in Arizona.

4. Upon completion of a project exempt from the plan review requirements of this Article pursuant to subsection (B)(3), the public water system shall submit a notice of compliance which contains:

- a. A fair market value cost estimate for the project,
- b. The name of the design engineer and the review engineer, and
- c. The project completion date and the total construction time.

C. The Department shall act upon a complete Approval to Construct application submitted for approval within 30 days after its receipt.

D. The Department shall issue an Approval to Construct only when the following conditions have been met:

1. Plans and specifications submitted to the Department demonstrate that the proposed public water system reasonably can be expected to comply with this Chapter, including the MCLs in Article 2; and
2. The water system is in compliance with this Chapter or reasonably can be expected to return to compliance with this Chapter as a result of the proposed construction.

E. An Approval to Construct becomes void if an extension of time is not granted by the Department within 90 days after the passage of one of the following:

1. Construction does not begin within one year after the date the Approval to Construct is issued, or
2. There is a halt in construction of more than one year, or
3. Construction is not completed within three years after the date construction begins.

Historical Note

Section recodified from R18-4-505 at 10 A.A.R. 585, effective January 30, 2004 (Supp. 04-1).

R18-5-506. Compliance with Approved Plans

All construction shall conform to approved plans and specifications. In order to make a change in an approved design that will affect water quality, capacity, flow, sanitary features, or performance, a public water system shall submit revised plans and specifications to the Department for review, together with a written statement regarding the reasons for the change. The public water system shall not proceed with the construction affected by the design change without written approval from the Department. Revisions not affecting water quality, capacity, flow, sanitary features, or performance may be permitted during construction without further approval if record drawings documenting these changes, prepared by a professional engineer registered in Arizona, are submitted to the Department under R18-5-508.

Historical Note

Section recodified from R18-4-506 at 10 A.A.R. 585,

effective January 30, 2004 (Supp. 04-1).

R18-5-507. Approval of Construction

- A. A person shall not operate a newly constructed facility until an Approval of Construction is issued by the Department.
- B. The Department shall not issue an Approval of Construction on a newly constructed public water system, an extension to an existing public water system, or any alteration of an existing public water system that affects its treatment, capacity, water quality, flow, distribution, or operational performance unless the following requirements have been met:
 - 1. A professional engineer registered in Arizona or a person under the direct supervision of a professional engineer registered in Arizona, has completed a final inspection and submitted a Certificate of Completion on a form approved by the Department to which the seal and signature of the professional engineer registered in Arizona have been affixed;
 - 2. The construction conforms to approved plans and specifications, as indicated in the Certificate of Completion, and all changes have been documented by the submission of record drawings under R18-5-508;
 - 3. An operations and maintenance manual has been submitted and approved by the Department if construction includes a new water treatment facility; and
 - 4. An operator, who is certified by the Department at a grade appropriate for each facility, is employed to operate each water treatment plant and the potable water distribution system.
- C. The Department may conduct the final inspection required in subsection (B)(1), at a public water system's request, if both of the following notification requirements are met:
 - 1. The public water system notifies the Department at least seven days before beginning construction on a public water system installation, change, or addition that is authorized by an Approval to Construct; and
 - 2. The public water system notifies the Department of completion of construction at least 10 working days before the expected completion date.

Historical Note

Section recodified from R18-4-507 at 10 A.A.R. 585,

effective January 30, 2004 (Supp. 04-1).

R18-5-508. Record Drawings

- A. A professional engineer registered in Arizona shall clearly and accurately record or mark, on a complete set of working project drawings, each deviation from the original plan and the dimensions of the deviation. The set of marked drawings becomes the record drawings, reflecting the project as actually built.
- B. The professional engineer registered in Arizona shall sign, date, and place the engineer's seal on each sheet of the record drawings and submit them to the Department upon completion of the project. The record drawings shall be accompanied by an Engineer's Certificate of Completion, signed by the professional engineer registered in Arizona, and submitted on a form approved by the Department for any project inspected under R18-5-507(B).
- C. Quality control testing results and calculations, including pressure and microbiological testing, and disinfectant residual records, shall be submitted with the Engineer's Certificate of Completion together with field notes and the name of the individual witnessing the tests.

Historical Note

Section recodified from R18-4-508 at 10 A.A.R. 585, effective January 30, 2004 (Supp. 04-1).

R18-5-509. Modification to Existing Treatment Process

Before a public water system may make a modification to its existing treatment process, the public water system shall submit and obtain the Department's approval for a detailed plan that explains the proposed modifications and the safeguards that the public water system will implement to ensure that the quality of the water served by the system will not be adversely affected by the modification. The public water system shall comply with the provisions in the approved plans.

Historical Note

Section recodified from R18-4-509 at 10 A.A.R. 585, effective January 30, 2004 (Supp. 04-1).

49-104. Powers and duties of the department and director

A. The department shall:

1. Formulate policies, plans and programs to implement this title to protect the environment.
2. Stimulate and encourage all local, state, regional and federal governmental agencies and all private persons and enterprises that have similar and related objectives and purposes, cooperate with those agencies, persons and enterprises and correlate department plans, programs and operations with those of the agencies, persons and enterprises.
3. Conduct research on its own initiative or at the request of the governor, the legislature or state or local agencies pertaining to any department objectives.
4. Provide information and advice on request of any local, state or federal agencies and private persons and business enterprises on matters within the scope of the department.
5. Consult with and make recommendations to the governor and the legislature on all matters concerning department objectives.
6. Promote and coordinate the management of air resources to ensure their protection, enhancement and balanced utilization consistent with the environmental policy of this state.
7. Promote and coordinate the protection and enhancement of the quality of water resources consistent with the environmental policy of this state.
8. Encourage industrial, commercial, residential and community development that maximizes environmental benefits and minimizes the effects of less desirable environmental conditions.
9. Ensure the preservation and enhancement of natural beauty and man-made scenic qualities.
10. Provide for the prevention and abatement of all water and air pollution including that related to particulates, gases, dust, vapors, noise, radiation, odor, nutrients and heated liquids in accordance with article 3 of this chapter and chapters 2 and 3 of this title.
11. Promote and recommend methods for the recovery, recycling and reuse or, if recycling is not possible, the disposal of solid wastes consistent with sound health, scenic and environmental quality policies. The department shall report annually on its revenues and expenditures relating to the solid and hazardous waste programs overseen or administered by the department.
12. Prevent pollution through the regulation of the storage, handling and transportation of solids, liquids and gases that may cause or contribute to pollution.
13. Promote the restoration and reclamation of degraded or despoiled areas and natural resources.
14. Participate in the state civil defense program and develop the necessary organization and facilities to meet wartime or other disasters.
15. Cooperate with the Arizona-Mexico commission in the governor's office and with researchers at universities in this state to collect data and conduct projects in the United States and Mexico on issues that are within the scope of the department's duties and that relate to quality of life, trade and economic development in this state in a manner that will help the Arizona-Mexico commission to assess and enhance the economic competitiveness of this state and of the Arizona-Mexico region.

16. Unless specifically authorized by the legislature, ensure that state laws, rules, standards, permits, variances and orders are adopted and construed to be consistent with and no more stringent than the corresponding federal law that addresses the same subject matter. This paragraph does not adversely affect standards adopted by an Indian tribe under federal law.

17. Provide administrative and staff support for the oil and gas conservation commission.

B. The department, through the director, shall:

1. Contract for the services of outside advisers, consultants and aides reasonably necessary or desirable to enable the department to adequately perform its duties.

2. Contract and incur obligations reasonably necessary or desirable within the general scope of department activities and operations to enable the department to adequately perform its duties.

3. Utilize any medium of communication, publication and exhibition when disseminating information, advertising and publicity in any field of its purposes, objectives or duties.

4. Adopt procedural rules that are necessary to implement the authority granted under this title, but that are not inconsistent with other provisions of this title.

5. Contract with other agencies, including laboratories, in furthering any department program.

6. Use monies, facilities or services to provide matching contributions under federal or other programs that further the objectives and programs of the department.

7. Accept gifts, grants, matching monies or direct payments from public or private agencies or private persons and enterprises for department services and publications and to conduct programs that are consistent with the general purposes and objectives of this chapter. Monies received pursuant to this paragraph shall be deposited in the department fund corresponding to the service, publication or program provided.

8. Provide for the examination of any premises if the director has reasonable cause to believe that a violation of any environmental law or rule exists or is being committed on the premises. The director shall give the owner or operator the opportunity for its representative to accompany the director on an examination of those premises. Within forty-five days after the date of the examination, the department shall provide to the owner or operator a copy of any report produced as a result of any examination of the premises.

9. Supervise sanitary engineering facilities and projects in this state, authority for which is vested in the department, and own or lease land on which sanitary engineering facilities are located, and operate the facilities, if the director determines that owning, leasing or operating is necessary for the public health, safety or welfare.

10. Adopt and enforce rules relating to approving design documents for constructing, improving and operating sanitary engineering and other facilities for disposing of solid, liquid or gaseous deleterious matter.

11. Define and prescribe reasonably necessary rules regarding the water supply, sewage disposal and garbage collection and disposal for subdivisions. The rules shall:

(a) Provide for minimum sanitary facilities to be installed in the subdivision and may require that water systems plan for future needs and be of adequate size and capacity to deliver specified minimum quantities of drinking water and to treat all sewage.

(b) Provide that the design documents showing or describing the water supply, sewage disposal and garbage collection facilities be submitted with a fee to the department for review and that no lots in any subdivision be offered for sale before compliance with the standards and rules has been demonstrated by approval of the design documents by the department.

12. Prescribe reasonably necessary measures to prevent pollution of water used in public or semipublic swimming pools and bathing places and to prevent deleterious conditions at those places. The rules shall prescribe minimum standards for the design of and for sanitary conditions at any public or semipublic swimming pool or bathing place and provide for abatement as public nuisances of premises and facilities that do not comply with the minimum standards. The rules shall be developed in cooperation with the director of the department of health services and shall be consistent with the rules adopted by the director of the department of health services pursuant to section 36-136, subsection I, paragraph 10.

13. Prescribe reasonable rules regarding sewage collection, treatment, disposal and reclamation systems to prevent the transmission of sewage borne or insect borne diseases. The rules shall:

(a) Prescribe minimum standards for the design of sewage collection systems and treatment, disposal and reclamation systems and for operating the systems.

(b) Provide for inspecting the premises, systems and installations and for abating as a public nuisance any collection system, process, treatment plant, disposal system or reclamation system that does not comply with the minimum standards.

(c) Require that design documents for all sewage collection systems, sewage collection system extensions, treatment plants, processes, devices, equipment, disposal systems, on-site wastewater treatment facilities and reclamation systems be submitted with a fee for review to the department and may require that the design documents anticipate and provide for future sewage treatment needs.

(d) Require that construction, reconstruction, installation or initiation of any sewage collection system, sewage collection system extension, treatment plant, process, device, equipment, disposal system, on-site wastewater treatment facility or reclamation system conform with applicable requirements.

14. Prescribe reasonably necessary rules regarding excreta storage, handling, treatment, transportation and disposal. The rules may:

(a) Prescribe minimum standards for human excreta storage, handling, treatment, transportation and disposal and shall provide for inspection of premises, processes and vehicles and for abating as public nuisances any premises, processes or vehicles that do not comply with the minimum standards.

(b) Provide that vehicles transporting human excreta from privies, septic tanks, cesspools and other treatment processes shall be licensed by the department subject to compliance with the rules. The department may require payment of a fee as a condition of licensure. The department may establish by rule a fee as a condition of licensure, including a maximum fee. As part of the rulemaking process, there must be public notice and comment and a review of the rule by the joint legislative budget committee. The department shall not increase that fee by rule without specific statutory authority for the increase. The fees shall be deposited, pursuant to sections 35-146 and 35-147, in the solid waste fee fund established by section 49-881.

15. Perform the responsibilities of implementing and maintaining a data automation management system to support the reporting requirements of title III of the superfund amendments and reauthorization act of 1986 (P.L. 99-499) and article 2 of this chapter.

16. Approve remediation levels pursuant to article 4 of this chapter.

17. Establish or revise fees by rule pursuant to the authority granted under title 44, chapter 9, article 8 and chapters 4 and 5 of this title for the department to adequately perform its duties. All fees shall be fairly assessed and impose the least burden and cost to the parties subject to the fees. In establishing or revising fees, the department shall base the fees on:

(a) The direct and indirect costs of the department's relevant duties, including employee salaries and benefits, professional and outside services, equipment, in-state travel and other necessary operational expenses directly

related to issuing licenses as defined in title 41, chapter 6 and enforcing the requirements of the applicable regulatory program.

(b) The availability of other funds for the duties performed.

(c) The impact of the fees on the parties subject to the fees.

(d) The fees charged for similar duties performed by the department, other agencies and the private sector.

18. Appoint a person with a background in oil and gas conservation to act on behalf of the oil and gas conservation commission and administer and enforce the applicable provisions of title 27, chapter 4 relating to the oil and gas conservation commission.

C. The department may:

1. Charge fees to cover the costs of all permits and inspections it performs to ensure compliance with rules adopted under section 49-203, except that state agencies are exempt from paying those fees that are not associated with the dredge and fill permit program established pursuant to chapter 2, article 3.2 of this title. For services provided under the dredge and fill permit program, a state agency shall pay either:

(a) The fees established by the department under the dredge and fill permit program.

(b) The reasonable cost of services provided by the department pursuant to an interagency service agreement.

2. Monies collected pursuant to this subsection shall be deposited, pursuant to sections 35-146 and 35-147, in the water quality fee fund established by section 49-210.

3. Contract with private consultants for the purposes of assisting the department in reviewing applications for licenses, permits or other authorizations to determine whether an applicant meets the criteria for issuance of the license, permit or other authorization. If the department contracts with a consultant under this paragraph, an applicant may request that the department expedite the application review by requesting that the department use the services of the consultant and by agreeing to pay the department the costs of the consultant's services. Notwithstanding any other law, monies paid by applicants for expedited reviews pursuant to this paragraph are appropriated to the department for use in paying consultants for services.

D. The director may:

1. If the director has reasonable cause to believe that a violation of any environmental law or rule exists or is being committed, inspect any person or property in transit through this state and any vehicle in which the person or property is being transported and detain or disinfect the person, property or vehicle as reasonably necessary to protect the environment if a violation exists.

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

49-203. Powers and duties of the director and department

A. The director shall:

1. Adopt, by rule, water quality standards in the form and subject to the considerations prescribed by article 2 of this chapter.
2. Adopt, by rule, a permit program for WOTUS that is consistent with but not more stringent than the requirements of the clean water act for the point source discharge of any pollutant or combination of pollutants into WOTUS. The program and the rules shall be sufficient to enable this state to administer the permit program identified in section 402(b) of the clean water act, including the sewage sludge requirements of section 405 of the clean water act and as prescribed by article 3.1 of this chapter.
3. Apply the program and rules authorized under paragraph 2 of this subsection to point source discharges to non-WOTUS protected surface waters, consistent with section 49-255.04, which establishes the program components and rules that do not apply to non-WOTUS protected surface waters. The following are exempt from the non-WOTUS protected surface waters point source discharge program:
 - (a) Discharges to a non-WOTUS protected surface water incidental to a recharge project.
 - (b) Established or ongoing farming, ranching and silviculture activities such as plowing, seeding, cultivating, minor drainage or harvesting for the production of food, fiber or forest products or upland soil and water conservation practices.
 - (c) Maintenance but not construction of drainage ditches.
 - (d) Construction and maintenance of irrigation ditches.
 - (e) Maintenance of structures such as dams, dikes and levees.
4. Adopt, by rule, a program to control nonpoint source discharges of any pollutant or combination of pollutants into WOTUS.
5. Adopt, by rule, an aquifer protection permit program to control discharges of any pollutant or combination of pollutants that are reaching or may with a reasonable probability reach an aquifer. The permit program shall be as prescribed by article 3 of this chapter.
6. Adopt, by rule, the permit program for underground injection control described in the safe drinking water act.
7. Adopt, by rule, technical standards for conveyances of reclaimed water and a permit program for the direct reuse of reclaimed water.
8. Adopt, by rule or as permit conditions, discharge limitations, best management practice standards, new source performance standards, toxic and pretreatment standards and other standards and conditions as reasonable and necessary to carry out the permit programs and regulatory duties described in paragraphs 2 through 6 of this subsection.
9. Assess and collect fees to revoke, issue, deny, modify or suspend permits issued pursuant to this chapter and to process permit applications. The director may also assess and collect costs reasonably necessary if the director must conduct sampling or monitoring relating to a facility because the owner or operator of the facility has refused or failed to do so on order by the director. The director shall set fees that are reasonably related to the department's costs of providing the service for which the fee is charged. Monies collected from aquifer protection permit fees and from Arizona pollutant discharge elimination system permit fees shall be deposited, pursuant to sections 35-146 and 35-147, in the water quality fee fund established by section 49-210. Monies from other permit fees shall be deposited, pursuant to sections 35-146 and 35-147, in the water quality fee fund

unless otherwise provided by law. Monies paid by an applicant for review by consultants for the department pursuant to section 49-241.02, subsection D shall be deposited, pursuant to sections 35-146 and 35-147, in the water quality fee fund established by section 49-210. State agencies are exempt from all fees imposed pursuant to this chapter except for those fees associated with the dredge and fill permit program established pursuant to article 3.2 of this chapter. 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.

10. Adopt, modify, repeal and enforce other rules that are reasonably necessary to carry out the director's functions under this chapter.

11. Require monitoring at an appropriate point of compliance for any organic or inorganic pollutant listed under section 49-243, subsection I if the director has reason to suspect the presence of the pollutant in a discharge.

12. Adopt rules establishing what constitutes a significant increase or adverse alteration in the characteristics or volume of pollutants discharged for purposes of determining what constitutes a major modification to an existing facility under the definition of new facility pursuant to section 49-201. Before the adoption of these rules, the director shall determine whether a change at a particular facility results in a significant increase or adverse alteration in the characteristics or volume of pollutants discharged on a case-by-case basis, taking into account site conditions and operational factors.

13. Consider evidence gathered by the Arizona navigable stream adjudication commission established by section 37-1121 when deciding whether a permit is required to discharge pursuant to article 3.1 of this chapter.

B. The director may:

1. On presentation of credentials, enter into, on or through any public or private property from which a discharge has occurred, is occurring or may occur or on which any disposal, land application of sludge or treatment regulated by this chapter has occurred, is occurring or may be occurring and any public or private property where records relating to a discharge or records that are otherwise required to be maintained as prescribed by this chapter are kept, as reasonably necessary to ensure compliance with this chapter. The director or a department employee may take samples, inspect and copy records required to be maintained pursuant to this chapter, inspect equipment, activities, facilities and monitoring equipment or methods of monitoring, take photographs and take other action reasonably necessary to determine the application of, or compliance with, this chapter. The owner or managing agent of the property shall be afforded the opportunity to accompany the director or department employee during inspections and investigations, but prior notice of entry to the owner or managing agent is not required if reasonable grounds exist to believe that notice would frustrate the enforcement of this chapter. If the director or department employee obtains any samples before leaving the premises, the director or department employee shall give the owner or managing agent a receipt describing the samples obtained and a portion of each sample equal in volume or weight to the portion retained. If an analysis is made of samples, or monitoring and testing are performed, a copy of the results shall be furnished promptly to the owner or managing agent.

2. Require any person who has discharged, is discharging or may discharge into the waters of the state under article 3, 3.1, 3.2 or 3.3 of this chapter and any person who is subject to pretreatment standards and requirements or sewage sludge use or disposal requirements under article 3.1 of this chapter to collect samples, to establish and maintain records, including photographs, and to install, use and maintain sampling and monitoring equipment to determine the absence or presence and nature of the discharge or indirect discharge or sewage sludge use or disposal.

3. Administer state or federal grants, including grants to political subdivisions of this state, for the construction and installation of publicly and privately owned pollutant treatment works and pollutant control devices and

establish grant application priorities.

4. Develop, implement and administer a water quality planning process, including a ranking system for applicant eligibility, wherein appropriated state monies and available federal monies are awarded to political subdivisions of this state to support or assist regional water quality planning programs and activities.

5. Enter into contracts and agreements with the federal government to implement federal environmental statutes and programs.

6. 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 chapter.

7. Participate in, conduct and contract for studies, investigations, research and demonstrations relating to the causes, minimization, prevention, correction, abatement, mitigation, elimination, control and remedy of discharges and collect and disseminate information relating to discharges.

8. File bonds or other security as required by a court in any enforcement actions under article 4 of this chapter.

9. Adopt by rule a permit program for the discharge of dredged or fill material into WOTUS for purposes of implementing the permit program established by 33 United States Code section 1344.

C. Subject to section 38-503 and other applicable statutes and rules, the department may contract with a private consultant to assist the department in reviewing aquifer protection permit applications and on-site wastewater treatment facilities to determine whether a facility meets the criteria and requirements of this chapter and the rules adopted by the director. Except as provided in section 49-241.02, subsection D, the department shall not use a private consultant if the fee charged for that service would be greater than the fee the department would charge to provide that service. The department shall pay the consultant for the services rendered by the consultant from fees paid by the applicant or facility to the department pursuant to subsection A, paragraph 9 of this section.

D. The director shall integrate all of the programs authorized in this section and other programs affording water quality protection that are administered by the department for purposes of administration and enforcement and shall avoid duplication and dual permitting to the maximum extent practicable.

49-352. Classifying systems and certifying personnel; limitation

A. The department shall establish and enforce rules for the classification of systems for potable water and certifying operating personnel according to the skill, knowledge and experience necessary within the classification. The rules shall also provide that operating personnel may be certified on the basis of training and supervision at the place of employment. The department may assess and collect reasonable certification fees to reimburse the cost of certification services, which shall be deposited in the water quality fee fund established by section 49-210. Such rules apply to all public water systems involved in the collection, storage, treatment or distribution of potable water. The rules do not apply to systems that are not public water systems, including irrigation, industrial or similar systems where the water is used for nonpotable purposes.

B. For the purposes of this article:

1. A public water system is a water system that:

(a) Provides water for human consumption through pipes or other constructed conveyances.

(b) Has at least fifteen service connections or regularly serves an average of at least twenty-five persons daily for at least sixty days a year.

2. A public water system as described in paragraph 1, subdivisions (a) and (b) of this subsection includes any collection, treatment, storage and distribution facilities that are under the control of the operator of a public water system and that are used primarily in connection with the system and any collection or pretreatment storage facilities that are not under the control of the operator of a public water system and that are used primarily in connection with a public water system.

3. A service connection does not include a connection to a system that delivers water by a constructed conveyance other than a pipe, if any of the following applies:

(a) The water is used exclusively for purposes other than residential uses consisting of drinking, cooking or bathing or other similar uses.

(b) The department determines that alternative water is provided for residential or similar uses for drinking and cooking and that the water achieves a level of public health protection that is equivalent to the applicable national primary drinking water regulations.

(c) The department determines that the water that is provided for residential or similar uses for drinking, cooking and bathing is centrally treated or is treated at the point of entry by the water provider, a pass-through entity or the user to achieve the level of public health protection that is equivalent to the applicable national primary drinking water regulations.

4. An irrigation district in existence before May 18, 1994 and that provides primarily agricultural service through a piped water system with only incidental residential or similar use is not a public water system if the system or the residential or other similar users of the system comply with paragraph 3, subdivision (b) or (c) of this subsection.

5. Persons who receive water through connections that are not service connections pursuant to paragraph 3 of this subsection are not included in the computation of the number of persons prescribed by paragraph 1, subdivision (b) of this subsection.

49-353. Duties of director; rules; prohibited lead use

A. The director shall:

1. Exercise general supervision over all matters related to water quality control of public water systems throughout this state.

2. Prescribe rules regarding the production, treatment, distribution and testing of potable water by public water systems, except that such rules shall not apply to irrigation, industrial or similar systems where the water is used for nonpotable purposes. The rules shall comply with at least the following:

(a) The requirements established by the United States environmental protection agency for state primary enforcement responsibility of the safe drinking water act, including the requirements of 40 Code of Federal Regulations parts 141 and 142.

(b) Require that the plans and specifications for all public water systems, including water treatment plants, distribution systems, distribution system extensions, water treatment methods and devices and all appurtenances and devices for sale to be used in water supplies and public water systems be submitted with a fee for review to the department. The department, in establishing fees authorized by this section, shall comply with title 41, chapter 6. The department shall not set a fee at more than the department's cost of providing the service for which the fee is charged. State agencies are exempt from all fees imposed pursuant to this section. Monies collected from the fees shall be deposited in the water quality fee fund established by section 49-210. The director may require that plans and specifications for public water systems include programs to meet future needs for drinking water and to supply specified minimum quantities of drinking water. The director shall:

(i) Require that a new public water system demonstrate that the system possesses adequate managerial and financial capacity to operate in compliance with this article and the rules adopted pursuant to this article.

(ii) Accept adequate findings of other public authorities regarding the adequate managerial and financial capacity of a public water system to operate in compliance with this article and the rules adopted pursuant to this article.

(c) Provide that no public water system, including a water treatment plant, distribution system, distribution system extension, water treatment method or device, appurtenance and device used in water supplies or public water systems be constructed, reconstructed, installed or initiated before compliance with the standards and rules has been demonstrated by approval of the plans and specifications by the department. The rules shall prescribe minimum standards for the bacteriological, physical and chemical quality of water distributed through public water systems. The director of environmental quality may consult with the director of the department of health services in developing these standards.

(d) Provide for a simplified administrative procedure for approving structural revisions, additions, extensions or modifications to existing small public water systems for potable water serving a population of three thousand three hundred or fewer persons.

(e) Exempt from the plan review requirements of this paragraph, including any requirements for approval to construct or approval of construction, any structural revisions, additions, extensions or modifications to public water systems which are in compliance with the department's rules applicable to those systems or which are making satisfactory progress towards compliance under a schedule approved by the department if either of the following conditions is satisfied:

(i) The revision, addition, extension or modification has a project cost of twelve thousand five hundred dollars or less.

(ii) The revision, addition, extension or modification is made to a water line which is not for a subdivision requiring plat approval by a city, town or county, and has a project cost of more than twelve thousand five

hundred dollars but less than fifty thousand dollars, the design of which is sealed by a professional engineer registered in this state and the construction of which is reviewed for conformance with the design by a professional engineer.

- (f) Require a notice of compliance with the conditions for exemption on the completion of any revisions, additions, extensions or modifications completed in accordance with subdivision (e) of this paragraph.
 - (g) Provide for the submission of samples at stated intervals.
 - (h) Provide for inspection and certification of such water supplies.
 - (i) Provide for the abatement as public nuisances of any premises, equipment, process or device, or public water system that does not comply with the minimum standards and rules.
 - (j) Provide for records regarding water quality to be kept by owners and operators of the public water systems and that reports regarding water quality be filed with the department.
 - (k) Provide for appropriate actions to be taken if a water supply does not meet the standards established by the department.
 - (l) Require a public water system to implement a specified program to control contamination from backflow, backsiphonage or cross connection. All such programs shall be consistent with section 37-1388.
 - (m) Require that public water systems identify and provide notice to persons that may be affected by lead contamination of their drinking water where such contamination results from either or both of the following:
 - (i) The lead content in the construction materials of the public water distribution system.
 - (ii) Corrosivity of the water supply sufficient to cause leaching of lead.
 - (n) Provide for relief from water testing and monitoring requirements for public water systems qualifying under the federal safe drinking water act (P.L. 93-523; 88 Stat. 1661; P.L. 95-190; 91 Stat. 1393; P.L. 104-182; 110 Stat. 1613), as amended in 1996.
3. Develop and implement strategies to assist public water systems in acquiring and maintaining the technical, managerial and financial capacity to operate in compliance with this article and the rules adopted pursuant to this article. Assistance may be provided based on the needs of the water system.
- B. Pipes, pipe fittings and plumbing fittings and fixtures having a lead content in excess of a weighted average of one-quarter of one percent lead when used with respect to the wetted surfaces and solders and flux having a lead content in excess of two-tenths of one percent shall not be used in the installation or repair of public water systems or of any plumbing in residential or nonresidential facilities providing water for human consumption. The weighted average lead content of a pipe, pipe fitting or plumbing fitting or fixture shall be calculated as follows:
- 1. For each wetted component, the percentage of lead in the component shall be multiplied by the ratio of the wetted surface area of that component to the total wetted surface area of the entire product to arrive at the weighted percentage of lead of the component.
 - 2. The weighted percentage of lead of each wetted component shall be added together, and the sum of these weighted percentages shall constitute the weighted average lead content of the product.
 - 3. The lead content of the material used to produce a wetted component shall be used to determine compliance with this subsection.
 - 4. For lead content of materials that are provided as a range, the maximum content of that range shall be used.

C. Subsection B of this section does not apply to:

1. Leaded joints necessary for the repair of cast iron pipes.
2. Pipes, pipe fittings and plumbing fittings and fixtures, including backflow preventers, that are used exclusively for nonpotable water services such as manufacturing, industrial processing, irrigation, outdoor watering or any other uses where the water is not anticipated to be used for human consumption.
3. Toilets, bidets, urinals, fill valves, flushometer valves, tub fillers, shower valves or service saddles or water distribution main gate valves that are two inches in diameter or larger.

D. Notwithstanding subsection A, paragraph 2, subdivision (c) of this section, a public water system may construct, reconstruct, install, extend or initiate a water supply system, water treatment plant, distribution system, water treatment method or device, or appurtenance that is used in water supply or in a public water system when the system is out of compliance with standards and rules adopted pursuant to this article only if the construction is necessary to correct the system's noncompliance.

E. This section and the rules adopted pursuant to this section apply to public water systems as described by section 49-352, subsection B.

49-353.01. Duties of director; rules; standards; water supply; definition

A. The director shall adopt rules which prescribe minimum standards for the:

1. Sanitary facilities and conditions that shall be maintained by any public water system.
2. Chemicals, additives and drinking water system components that come into contact with drinking water that is used by any domestic or industrial water supply and that is sold or distributed to the public.

B. Chemicals and additives certified as conforming to the national sanitation foundation standards comply with the standards required by this section.

C. In those instances where chemicals, additives and drinking water system components that come into contact with drinking water are essential to the design, construction or operation of the drinking water system and have not been certified by the national sanitation foundation or have national sanitation foundation certification but are not available from more than one source, the standards shall provide for the use of alternatives which include:

1. Chemicals and additives composed entirely of ingredients determined by the environmental protection agency, the food and drug administration or other federal agencies as appropriate for addition to potable water or aqueous food.
2. Chemicals and additives composed entirely of ingredients listed in the national academy of sciences water chemicals codex.
3. Chemicals, additives and drinking water system components consistent with the specifications of the American water works association.
4. Chemicals, additives and drinking water system components that are designed for use in drinking water systems and that are consistent with the specifications of the American society for testing and materials.
5. Drinking water system components that are historically used or in use in drinking water systems consistent with standard practice and that have not been demonstrated during past applications in the United States to contribute to water contamination.

D. Except as identified by the department as an alternative in accordance with this section at or after the time of use or installation, drinking water system components installed and used after January 1, 1993 shall conform to the national sanitation foundation standards.

E. The director of the department of environmental quality may consult with the director of the department of health services in developing the standards prescribed by this section.

F. For the purposes of this section, "drinking water system components" means equipment and materials that are used in a drinking water system, including process media, protective materials, joining and sealing materials, pipes and related products, mechanical devices and mechanical plumbing devices.

49-361. Sewage treatment plants; operator certification

The department shall adopt and enforce rules to classify sewage collection systems and treatment plants and to certify operating personnel according to the skill, knowledge and experience necessary within the classification. The rules shall provide that operating personnel may be certified on the basis of training and supervision at the place of employment. The department may assess and collect reasonable certification fees to reimburse the cost of certification services, and the fees shall be deposited, pursuant to sections 35-146 and 35-147, in the water quality fee fund established by section 49-210. The rules apply to all sewage treatment plants that receive and treat wastes from common collection sewers and industrial plants but do not apply to septic tanks, to devices that serve a single home or to industrial treatment devices that are used to perform or allow recycling or impounding wastes within the boundaries of the industry's property.

E.

CONSIDERATION AND DISCUSSION OF A ONE YEAR EXTENSION REQUEST FOR A FIVE YEAR REVIEW REPORT FROM THE BOARD OF FUNERAL DIRECTORS AND EMBALMERS



**Arizona State Board of Funeral
Directors & Embalmers**

Natasha Culbertson, Executive Director

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Doug A. Ducey

July 21, 2021

Sent via Email

Nicole Sornsin, GRRC Chair
Governor's Regulatory Review Council
100 North Fifteenth Avenue, Suite 305
Phoenix, Arizona 85007

Re: Extension for Five-Year-Review Report for A.A.C. Title 4, Chapter 12

Dear Ms. Sornsin,

The Arizona State Board of Funeral Directors and Embalmers respectfully requests a one year extension from the original due date of August 31, 2021 for their Five-Year-Review Report of Arizona Administrative Code (A.A.C.) Title 4, Chapter 12. The Board requests this extension because they have a new Executive Director who started on May 3, 2021 and a new Assistant Attorney General ("AAG") who started on May 17, 2021, both of whom will need adequate time to review and analyze the rules as well as the interaction between the rules and statutes and how the rules impact registrants and the industry. Additionally, the Funeral Board is currently undergoing a Sunset Audit.

I believe that an extension will allow myself and the Board's assigned AAG to make a reasoned and appropriate review of the Board's rules and to best comply with the purpose of the review. Should GRRC approve the extension, the new due date for the Arizona State Board of Funeral Directors and Embalmers Five-Year-Review Report would be August 31, 2022. Please let me know if this date is acceptable.

Thank you,

Natasha Culbertson
Executive Director
Arizona State Board of Funeral Directors and Embalmers
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1740 W. Adams Street
Phoenix, AZ 85007