

NOTICES OF PROPOSED RULEMAKING

Unless exempted by A.R.S. § 41-1005, each agency shall begin the rulemaking process by 1st submitting to the Secretary of State's Office a Notice of Rulemaking Docket Opening followed by a Notice of Proposed Rulemaking that contains the preamble and the full text of the rules. The Secretary of State's Office publishes each Notice in the next available issue of the *Register* according to the schedule of deadlines for *Register* publication.

Under the Administrative Procedure Act (A.R.S. § 41-1001 et seq.), an agency must allow at least 30 days to elapse after the publication of the Notice of Proposed Rulemaking in the *Register* before beginning any proceedings for adoption, amendment, or repeal of any rule. A.R.S. §§ 41-1013 and 41-1022.

NOTICE OF PROPOSED SUMMARY RULEMAKING

TITLE 10. LAW

CHAPTER 4. ARIZONA CRIMINAL JUSTICE COMMISSION ENHANCEMENT FUND ADMINISTRATION PROGRAM

PREAMBLE

- | <u>1. Sections Affected</u> | <u>Rulemaking Action</u> |
|-----------------------------|--------------------------|
| Article 3 | Repeal |
| R10-4-301 | Repeal |
| R10-4-302 | Repeal |
| R10-4-303 | Repeal |
| R10-4-304 | Repeal |
| R10-4-305 | Repeal |
2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):
Authorizing statutes: A.R.S. § 41-2405
Implementing statutes: A.R.S. § 41-2401
3. The interim effective date of the summary rules:
November 3, 1997
4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:
Name: Roy A. Holt, Assistant Director
Address: Arizona Criminal Justice Commission
1501 West Washington, Suite 207
Phoenix, Arizona 85007
Telephone: (602) 542-1928
Fax: (602) 542-4852
5. An explanation of the rule, including the agency's reasons for initiating the rule:
Prior to the 2nd session of the 41st legislature in 1994, A.R.S. § 41-2405(A)(8) gave the Criminal Justice Commission the authority to adopt rules for the purpose of allocating funds in A.R.S. § 41-2401, the Criminal Justice Enhancement Fund. During this session A.R.S. § 41-2405 was changed and the authorization to adopt rules for A.R.S. § 41-2401 was eliminated and consequently the Criminal Justice Commission no longer has the statutory authority for adopting or enforcing any rules concerning A.R.S. § 41-2401.
6. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:
Not applicable
7. The preliminary summary of the economic, small business, and consumer impact:
The rule is being repealed pursuant to A.R.S. § 41-1027(A)(1), and this rulemaking procedure is exempt by A.R.S. § 41-1055(D)(2) from providing an economic impact statement.

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8. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

Name: Roy A. Holt, Assistant Director
Address: Arizona Criminal Justice Commission
1501 West Washington, Suite 207
Phoenix, Arizona 85007
Telephone: (602) 542-1928
Fax: (602) 542-4852

9. The time, place, and nature of the proceedings for the adoption, amendment, or repeal of the rule, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:

The Commission has not scheduled any oral proceedings on this rulemaking action. The Commission will schedule oral proceedings on the proposed rule amendment or economic impact statement if 5 or more persons submit written requests for such proceedings to the person listed in question #8 no later than 5 p.m., December 10, 1997, which is the close of record date.

10. An explanation of why summary proceedings are justified:

A.R.S. § 41-1027(A)(1) provides the repeal of rules made obsolete by the repeal or suppression of an agency's statutory authority as described in paragraph 5.

11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:

Not applicable

12. Incorporations by reference and their location in the rules:

Not applicable

13. The full text of the rules follows:

TITLE 10. LAW

CHAPTER 4. ARIZONA CRIMINAL JUSTICE COMMISSION

ENHANCEMENT FUND ADMINISTRATION PROGRAM

ARTICLE 3. ENHANCEMENT FUND ADMINISTRATION PROGRAM

Section

- R10-4-301. Short Title
- R10-4-302. Purpose
- R10-4-303. Definitions
- R10-4-304. Allocating agency rules
- R10-4-305. Annual reports

ARTICLE 3. ENHANCEMENT FUND ADMINISTRATION PROGRAM

R10-4-301. Short Title

The provisions of these Rules shall be known and cited as the "Arizona Criminal Justice Enhancement Fund Administration Program."

R10-4-302. Purpose

The Commission shall supervise the Arizona Criminal Justice Enhancement Fund which is designed to support criminal justice and related agencies within the State, according to the provisions of A.R.S. § 41-2401.

R10-4-303. Definitions

In these rules:

1. "Allocating agency" means the department of public safety, the department of Corrections, the department of law or the supreme court in the performance of its duties under A.R.S. § 41-2401, subsection C, D, E or F.
2. "Commission" means the Arizona Criminal Justice Commission, as established by A.R.S. § 41-1308.
3. "Fund" means the Criminal Justice Enhancement Fund.

R10-4-304. Allocating agency rules

An allocating agency shall distribute fund monies in a manner consistent with these Rules and A.R.S. § 41-2401. The allocating agency shall require a written submittal from each applicant for fund monies showing:

1. That the request for funding is consistent with the purpose for which the appropriation of fund monies was made to allocating agency;
2. The objectives sought to be achieved by the use of fund monies and a method for accurately measuring the degree of success in fulfilling these objectives;
3. The amount of fund monies requested;
4. A detailed account of how the monies are going to be spent.

R10-4-305. Annual reports

Within 90 days after the end of each fiscal year, each allocating agency shall submit a written report to the Commission containing all of the following information:

1. The amount of fund monies held by the allocating agency at the beginning of the fiscal year.
2. The amount of fund monies distributed to the allocating agency by the State Treasurer during the fiscal year.
3. The number and type of applications for fund monies received by the allocating agency and the amount of each request.
4. How fund monies were distributed, including:
 - a. The name of each recipient of fund monies.
 - b. The amount of fund monies distributed to each recipient.
 - c. The amount of funds which were expended in relation to the specific objectives sought to be achieved by each recipient.

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5. ~~An analysis of the effectiveness and efficiency with which each recipient used fund monies to meet its stated objectives during the fiscal year, including a specific measurement of the degree to which crime reduction or the criminal justice process has been enhanced.~~

NOTICE OF PROPOSED RULEMAKING

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 2. DEPARTMENT OF ENVIRONMENTAL QUALITY - AIR POLLUTION CONTROL

PREAMBLE

1. **Sections Affected:**

R18-2-101	<u>Rulemaking Action:</u>
R18-2-302	Amend
R18-2-306	Amend
R18-2-320	Amend
R18-2-331	Amend
R18-2-1101	Amend

2. **The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rule are implementing (specific):**

Authorizing statute: A.R.S. § 49-104

Implementing statutes: A.R.S. §§ 49-404, 49-425, 49-426, 49-426.01, and 49-426.03

3. **The name and address of agency personnel with whom persons may communicate regarding the rule:**

Name:	Mark Lewandowski, Rule Development Section
Address:	Department of Environmental Quality 3033 North Central Phoenix, Arizona 85012-2809
Telephone:	(602) 207-2230
Fax:	(602) 207-2251

4. **An explanation of the rule, including the agency's reasons for initiating the rule:**

The Arizona Department of Environmental Quality (ADEQ) is proposing changes in 4 specific areas of stationary source permitting:

1. Correction of the deficiencies in the state's Title V program as listed in the EPA's October 31, 1996, *Federal Register* notice.
2. Changes to more effectively implement the EPA's hazardous air pollutants (HAP) 112(g) rule, as published by EPA in the December 27, 1996, *Federal Register*.
3. A correction to a permitting threshold for fuel-burning equipment to conform to a recent statutory change.
4. The addition of a pollutant and an emission rate to the definition of "significant" in R18-2-101(97). This pollutant and emission rate match federal law and were inadvertently omitted from ADEQ's recent landfill rule effective April 4, 1997.

ADEQ has placed these 4 groups of permit related changes together for purposes of efficiency and because ADEQ has determined that these 4 groups of changes are noncontroversial for reasons explained below. In addition, similar deadlines exist for the first 2. The deadline for correction of Arizona's Title V program deficiencies action is currently listed as May 30, 1998, (61 FR 55519), while 40 CFR 63.42(a) requires a state 112(g) program to be effective no later than June 29, 1998.

Title V Deficiencies

ADEQ applied for approval of a state-run federal operating permits program on November 15, 1993. The general requirements for approval are listed in 40 CFR 70, which was promulgated in July 1992. On October 31, 1996, EPA issued interim approval to ADEQ's permit program, with full approval conditioned on 6 corrections to be made before June of 1998 (61 FR 55910). Various sanctions, as well as EPA administration and enforcement of a federal permits program, are delineated by EPA as consequences for a state's failure to submit a timely corrective program. The following discussion follows EPA's order of items to be corrected at 61 FR 55519.

The 1st Title V correction occurs at R18-2-101(61)(b)(i). EPA found existing language in this provision regarding fugitive emissions to be potentially misleading and conditioned full approval upon clarification.

The 2nd Title V correction occurs at R18-2-320(E). EPA interpreted ADEQ rules as allowing parts of a source's permit to avoid full review requirements when the source changes from a Class II to a Class I source. Proposed new R18-2-320(E) would specifically require the entire permit for such source to undergo full Title V review.

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The 3rd Title V correction is at R18-2-306(A)(10). Of the 2 choices for correction required by EPA, ADEQ has chosen to eliminate a confusing 2nd sentence.

The 4th Title V correction is in R18-2-306(A)(14), which provides for trading of emissions increases and decreases within a permitted facility. EPA has required a clarification that such "non-revision" trades cannot trigger revisions under 2 provisions. This is not a substantive change because the 2 provisions are already similarly listed in R18-2-317(A)(1) and (2).

The 5th Title V correction is in regard to R18-2-310. This item, unlike the others, is quite controversial, and is currently in litigation. Therefore, ADEQ has decided not to act on this item in this rulemaking, pending the outcome of the litigation.

The 6th Title V correction is in R18-2-331. It makes a slight modification to the ADEQ rule in subsection (A)(1) so that "material permit conditions" can exist in county permits as well. This was the intent when the section was created in the November 1993 rulemaking. In addition, since the term "control officer" is not currently defined in rule, the definitions from A.R.S. § 49-471, which include "control officer", have been added to the opening language of R18-2-101. "Control officer" is also used in R18-2-324, R18-2-402, and R18-2-602.

Hazardous Air Pollutants 112(g) rule

The Clean Air Act Amendments of 1990 included a federal hazardous air pollutant program that required EPA to issue emission standards for all major sources of 188 listed HAP. The emission standards were divided by EPA into various industrial source categories, and by November 15, 2000, the EPA is required to have issued all of them. In the meantime, Congress also authorized, and EPA has now implemented, a transition rule known as "112(g)" to assure that effective pollution controls will be required for new major or reconstructed sources of HAP during the period before EPA is required to establish a national standard for a particular industry (61 FR 68384, December 27, 1996). The rationale is that it is more cost-effective to design and add new air pollution controls at the time when facilities are being built or significantly rebuilt. Since local permitting authorities would be establishing these standards for individual sources before EPA would issue them nationally, these standards are known as "case-by-case MACT" (maximum achievable control technology).

ADEQ recognizes that implementation of section 112(g) is possible with just the current rule infrastructure and the update of the incorporation by reference of the federal subpart in R18-2-1101(B)(2). However, for clarification, existing rules have also been changed in 2 places. First, language very similar to section 112(g) has been inserted at the end of R18-2-302. Second, in R18-2-320, the requirement for a significant revision now explicitly includes situations covered under 112(g). Note that the update of the incorporation by reference from "1996" to "1997" in R18-2-1101(B) has also been proposed by ADEQ in another rulemaking that is currently pending (see 3 A.A.R. 2142). The update is proposed in this rulemaking as well so that this rulemaking is independent of the other.

40 CFR 63.42(b) spells out various degrees of federal involvement in case-by-case MACT determinations should a state fail to adopt a program to implement section 112(g). The bottom line is that 40 CFR 63.40 through 63.44 would be applied to a 112(g) source whether or not the state adopts a 112(g) program as state law.

The 112(g) rule provisions are to be applied if a major source of HAP in 1 of the "seven year" or "ten year" MACT categories were to be built or reconstructed, (including new major processes or production units at existing sites, as those terms are used in the rule) before the applicable EPA deadline. Since the initial deadline for 7 year MACTs is November 15, 1997, this proposed rule would primarily affect 112(g) sources in the 60 or so 10-year MACT categories. The 112(j) regulations, already incorporated by reference by ADEQ in a 1995 rulemaking, apply after the applicable deadline.

ADEQ is not currently aware of any situations that may require application of the 112(g) rule before November 15, 2000.

Fossil fuel equipment permitting threshold

Laws 1997, Ch. 175, made several changes to Arizona air permitting statutes. One of the changes was to increase the permitting threshold for fossil fuel burning equipment at A.R.S. § 49-426(B) from an aggregate of 500,000 BTUs per hour to a single piece of equipment with 1 million BTUs per hour. The statute became effective on July 21, 1997, and a current ADEQ rule requiring a permit for equipment rated over 500,000 BTUs is now inconsistent with the new statute. ADEQ believes that this rule package is an appropriate place for this noncontroversial and deregulatory change. The 500,000 BTU threshold has been corrected to 1 million in R18-2-302(B)(2)(b) and other language inconsistent with the statute has been removed. The language regarding incinerators is proposed to be deleted because it is redundant. "Fuel-burning equipment" as defined at R18-2-101(45) includes incinerators.

Significant emission rate for Municipal Solid Waste Landfill Emissions

In its March 12, 1996, MSW landfill rule, EPA amended 40 CFR 51.166 and 51.21 to include a "significant" emission rate for municipal solid waste landfill emissions of 50 tons (see 61 FR at 9918). ADEQ inadvertently omitted this item from its own landfill rule, effective April 4, 1997 (3 A.A.R. 967). By including it in R18-2-101(97), ADEQ will ensure that NSR/PSD rules will apply to all subject facilities which have increases in landfill gas emissions above the significance level.

5. 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 to a political subdivision of this state:

Not applicable.

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6. The preliminary summary of the economic, small business, and consumer impact, and solicitation of comments on the summary:

ADEQ has determined that it may not be required to prepare an economic, small business and consumer impact statement (EIS) for the BTU portion of this rule because the rule may qualify as "deregulatory" under A.R.S. § 41-1055(D)(3). ADEQ seeks comment on whether the BTU portion of this rule would increase or decrease any monitoring, record keeping or reporting burdens on agencies, political subdivisions, businesses or persons. Based on information that it will gather between this publication and adoption, ADEQ may decide not to prepare and publish a final EIS for the BTU portion of the rule.

The changes in this rule related to Title V corrections, 112(g) implementation and the landfill emissions significance rate are changes that would be implemented by the federal government if not enacted into state law (see #4 of this preamble). Therefore, ADEQ has determined that there is no economic impact attributable to the changes in state rule.

Rule impact reduction on small businesses. A.R.S. § 41-1035 requires ADEQ to reduce the impact of a rule on small businesses by using certain methods when they are legal and feasible in meeting the statutory objectives for the rulemaking. The 5 listed methods are:

1. Establish less stringent compliance or reporting requirements in the rule for small businesses.
2. Establish less stringent schedules or deadlines in the rule for compliance or reporting requirements for small businesses.
3. Consolidate or simplify the rule's compliance or reporting requirements for small businesses.
4. Establish performance standards for small businesses to replace design or operational standards in the rule.
5. Exempt small businesses from any or all requirements of the rule.

The statutory objectives which are the basis of the rulemaking. The general statutory objectives that are the basis of this rulemaking are contained in the statutory authority cited in number 2 of this preamble. The specific objectives are as follows:

1. Implement rules necessary for full EPA approval of ADEQ's Title V operating permits program.
2. Implement rules necessary to implement EPA's § 112(g) rules.
3. Implement rules necessary for § 111(d) (landfill) plan approval.
4. Make a permitting rule change to be consistent with a new statutory provision.

ADEQ has determined that there is a beneficial impact on small businesses in transferring implementation of federal programs to ADEQ. In addition, for the 1st 3 of these objectives, ADEQ is required to adopt the federal rules without change. ADEQ therefor finds that it is not legal or feasible to adopt any of the 5 listed methods to reduce the impact of these rules on small businesses. Finally, where federal rules impact small businesses, EPA is required by both the Regulatory Flexibility Act and the Small Business Regulatory Enforcement and Fairness Act to make certain adjustments in its own rulemakings.

7. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:

Name: Mila Hill
Address: Department of Environmental Quality
3033 North Central
Phoenix, Arizona 85012-2809
Telephone: (602) 207-4435
Fax: (602) 207-2251

8. The time, place, and nature of the proceedings for the adoption of the rule:

An oral proceeding has been scheduled as follows:

Date: Tuesday, December 30, 1997
Time: 10 a.m.
Location: Department of Environmental Quality Public Hearing Room
3033 North Central
Phoenix, Arizona 85012

The close of written comment is Monday, January 5, 1998, 5 p.m.

9. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:
Not applicable

10. Incorporations by reference and their locations in the rules:

<u>Updated Incorporation by reference</u>	<u>Location</u>
40 CFR 63, subpart B	R18-2-1101(B)

11. The full text of the rules follows:

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 2. DEPARTMENT OF ENVIRONMENTAL QUALITY - AIR POLLUTION CONTROL

ARTICLE 1. GENERAL

Section

R18-2-101. Definitions

ARTICLE 3. PERMITS AND PERMIT REVISIONS

R18-2-302. Applicability; Classes of Permits

R18-2-306. Permit Contents

R18-2-320. Significant Permit Revisions

R18-2-331. Material Permit Conditions

ARTICLE 11. FEDERAL HAZARDOUS AIR
POLLUTANTS

R18-2-1101. National Emission Standards for Hazardous Air Pollutants (NESHAPs)

ARTICLE 1. GENERAL

R18-2-101. Definitions

In addition to the definitions prescribed in A.R.S. §§ 49-101, 49-401.01, 49-421, 49-471, and 49-541, in this Chapter, unless otherwise specified:

1. No change.
2. No change.
3. No change.
4. No change.
5. No change.
6. No change.
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59. No change.
60. No change.
61. "Major source" means:
 - a. A major source as defined in R18-2-401.
 - b. A major source under Section 112 of the Act:
 - i. For pollutants other than radionuclides, any stationary source that emits or has the potential to emit, in the aggregate, including fugitive emissions, 10 tons per year (tpy) or more of any hazardous air pollutant which has been listed pursuant to Section 112(b) of the Act, 25 tpy or more of any combination of such hazardous air pollutants, ~~including any major source of fugitive emissions of any such pollutants,~~ or such lesser quantity as described in Article 11 of this Chapter. Notwithstanding the preceding sentence, emissions from any oil or gas exploration or production well (with its associated equipment) and emissions from any pipeline compressor or pump station shall not be aggregated with emissions from other similar units, whether or not such units are in a contiguous area or under common control, to determine whether such units or stations are major sources; or
 - ii. For radionuclides, "major source" shall have the meaning specified by the Administrator by rule.
 - c. A major stationary source, as defined in Section 302 of the Act, that directly emits or has the potential to emit, 100 tpy or more of any air pollutant, including any major source of fugitive emissions of any such pollutant. The fugitive emissions of a stationary source shall not be considered in determining whether it is a major stationary source for the purposes of Section 302(j) of the Act, unless the source belongs to one of the following categories of stationary source:
 - i. Coal cleaning plants (with thermal dryers);

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- ii. Kraft pulp mills;
 - iii. Portland cement plants;
 - iv. Primary zinc smelters;
 - v. Iron and steel mills;
 - vi. Primary aluminum ore reduction plants;
 - vii. Primary copper smelters;
 - viii. Municipal incinerators capable of charging more than 50 tons of refuse per day;
 - ix. Hydrofluoric, sulfuric, or nitric acid plants;
 - x. Petroleum refineries;
 - xi. Lime plants;
 - xii. Phosphate rock processing plants;
 - xiii. Coke oven batteries;
 - xiv. Sulfur recovery plants;
 - xv. Carbon black plants (furnace process);
 - xvi. Primary lead smelters;
 - xvii. Fuel conversion plants;
 - xviii. Sintering plants;
 - xix. Secondary metal production plants;
 - xx. Chemical process plants;
 - xxi. Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;
 - xxii. Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
 - xxiii. Taconite ore processing plants;
 - xxiv. Glass fiber processing plants;
 - xxv. Charcoal production plants;
 - xxvi. Fossil-fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input;
 - xxvii. All other stationary source categories regulated by a standard promulgated as of August 7, 1980, under Section 111 or 112 of the Act, but only with respect to those air pollutants that have been regulated for that category.
- 62. No change.
 - 63. No change.
 - 64. No change.
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- 90. No change.
- 91. No change.
- 92. No change.
- 93. No change.
- 94. No change.
- 95. No change.
- 96. No change.
- 97. "Significant" means:
 - a. In reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

Pollutant	Emissions Rate
Carbon monoxide	100 tons per year (tpy)
Nitrogen oxides	40 tpy
Sulfur dioxide	40 tpy
Particulate matter	25 tpy
PM10	15 tpy
VOC	40 tpy
Lead	0.6 tpy
Fluorides	3 tpy
Sulfuric acid mist	7 tpy
Hydrogen sulfide (H ₂ S)	10 tpy
Total reduced sulfur (including H ₂ S)	10 tpy
Reduced sulfur compounds (including H ₂ S)	10 tpy
Municipal waste combustor organics (measured as total tetra-through octa-chlorinated dibenzo-p-dioxins and dibenzofurans)	3.5 x 10 ⁻⁶ tpy
Municipal waste combustor metals (measured as particulate matter)	15 tpy
Municipal waste combustor acid gases (measured as sulfur dioxide and hydrogen chloride)	40 tpy
<u>Municipal solid waste landfill emissions (measured as nonmethane organic compounds):</u>	<u>50 tpy</u>
 - b. In ozone nonattainment areas classified as serious or severe, significant emissions of VOC shall be determined under R18-2-405.
 - c. In reference to a regulated air pollutant that is not listed in subparagraph (a), is not a Class I or II substance listed in Section 602 of the Act, and is not a hazardous air pollutant according to A.R.S. § 49-401.01(11), any emission rate.
 - d. Notwithstanding the emission amount listed in subparagraph (a), any emissions rate or any net emissions increase associated with a major source or major modification, which would be constructed within 10 kilometers of a Class I area and have an impact on the ambient air quality of such area equal to or greater than 1 µg/m³ (24-hour average).
- 98. No change.
- 99. No change.
- 100. No change.
- 101. No change.
- 102. No change.
- 103. No change.
- 104. No change.
- 105. No change.
- 106. No change.
- 107. No change.

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- 108. No change.
- 109. No change.
- 110. No change.
- 111. No change.
- 112. No change.
- 113. No change.
- 114. No change.
- 115. No change.
- 116. No change.
- 117. No change.

R18-2-102. through R18-2-301. No change

ARTICLE 3. PERMITS AND PERMIT REVISIONS

R18-2-302. Applicability; Classes of Permits

- A. Except as otherwise provided in this Article, no person shall commence construction of, operate, or make a modification to any source subject to regulation under this Article, without first obtaining a permit or permit revision from the Director.
- B. There shall be 2 classes of permits as follows:
 - 1. A Class I permit shall be required for a person to commence construction of or operate any of the following:
 - a. Any major source,
 - b. Solid waste incineration units required to obtain a permit pursuant to section 129(e) of the Act,
 - c. An affected source,
 - d. Any source in a source category designated by the Administrator pursuant to 40 CFR 70.3 and adopted by the Director by rule.
 - 2. Unless a Class I permit is required, a Class II permit shall be required for:
 - a. A person to commence construction of or modify either of the following after rules adopted pursuant to A.R.S. § 49-426.06 are effective:
 - i. A source that emits, with controls, or has the potential to emit with controls, 10 tons per year or more of any hazardous air pollutant listed under A.R.S. § 49-426.04(A)(1) or 25 tons per year of any combination of hazardous air pollutants.
 - ii. A source that is within a category designated pursuant to A.R.S. § 49-426.05 and that emits, or has the potential to emit, with controls 1 ton per year or more of a hazardous air pollutant or 2½ tons per year of any combination of hazardous air pollutants.
 - b. A person to commence construction of or operate any of the following:
 - i. Any source, including an area source, subject to a standard, limitation, or other requirement under section 111 of the Act;
 - ii. Any source, including an area source, subject to a standard or other requirement under section 112 of the Act, except that a source is not required to obtain a permit solely because it is subject to regulations or requirements under section 112(r) of the Act;
 - iii. Any source that emits or has the potential to emit, without controls, significant quantities of regulated air pollutants;
 - iv. Stationary rotating machinery of greater than 325 brake horsepower;
 - v. Fuel burning equipment or incinerators which, at a location or property other than a 1 or 2 family residence, is rated at 1 million BTU per hour or greater, that are fired at a sustained

rate of more than 500,000 Btu per hour for more than an eight-hour period.

- c. A person to make a modification to a source which would cause it to emit, or have the potential to emit, quantities of regulated air pollutants greater than or equal to those specified in item (a)(i), (a)(ii) or (b)(iii) of this paragraph.
- C. Notwithstanding subsections (A) and (B) of this Section, the following sources shall not require a permit unless the source is a major source, or unless operation without a permit would result in a violation of the Act:
 - 1. Sources subject to 40 CFR 60(AAA), Standards of Performance for New Residential Wood Heaters.
 - 2. Sources and source categories that would be required to obtain a permit solely because they are subject to 40 CFR 61.145.
 - 3. Agricultural equipment used in normal farm operations. "Agricultural equipment used in normal farm operations" does not include equipment that would be classified as a source that would require a permit under Title V of the Act, or would be subject to a standard under 40 CFR 60 or 61.
- D. No person may construct or reconstruct any major source of hazardous air pollutants, unless the director determines that maximum achievable control technology emission limitation (MACT) for new sources under section 112 of the Act will be met. Where MACT has not been established by the Administrator, such determination shall be made on a case-by-case basis pursuant to 40 CFR 63.40 through 63.44, as incorporated by reference in R18-2-1101(B). For purposes of this subsection, constructing and reconstructing a major source shall have the meanings prescribed in 40 CFR 63.41.

R18-2-303. through R18-2-305. No change

R18-2-306. Permit Contents

- A. Each permit issued shall include the following elements:
 - 1. The date of issuance and the permit term.
 - 2. Enforceable emission limitations and standards, including those operational requirements and limitations that assure compliance with all applicable requirements at the time of issuance and those that have been voluntarily accepted pursuant to R18-2-306.01.
 - a. The permit shall specify and reference the origin of and authority for each term or condition, and identify any difference in form as compared to the applicable requirement upon which the term or condition is based.
 - b. The permit shall state that, where an applicable requirement of the Act is more stringent than an applicable requirement of regulations promulgated under title IV of the Act, both provisions shall be incorporated into the permit and shall be enforceable by the Administrator.
 - c. Any permit containing an equivalency demonstration for an alternative emission limit submitted pursuant to R18-2-304(D) shall contain provisions to ensure that any resulting emissions limit has been demonstrated to be quantifiable, accountable, enforceable, and based on replicable procedures.
 - d. The permit shall specify applicable requirements for fugitive emission limitations, regardless of whether the source category in question is included in the list of sources contained in the definition of major source in R18-2-101.

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3. Each permit shall contain the following requirements with respect to monitoring:
 - a. All emissions monitoring and analysis procedures or test methods required under the applicable requirements, including any procedures and methods promulgated pursuant to sections 114(a)(3) or 504(b) of the Act, and including any monitoring and analysis procedures or test methods required pursuant to R18-2-306.01;
 - b. Where the applicable requirement does not require periodic testing or instrumental or noninstrumental monitoring (which may consist of record keeping designed to serve as monitoring), periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit as reported pursuant to subsection (A)(4) of this section. Such monitoring requirements shall assure use of terms, test methods, units, averaging periods, and other statistical conventions consistent with the applicable requirement, and as otherwise required pursuant to R18-2-306.01. Record keeping provisions may be sufficient to meet the requirements of this subparagraph; and
 - c. As necessary, requirements concerning the use, maintenance, and, where appropriate, installation of monitoring equipment or methods.
4. With respect to record keeping, the permit shall incorporate all applicable record keeping requirements, including record keeping requirements established pursuant to R18-2-306.01, where applicable, for the following:
 - a. Records of required monitoring information that include the following:
 - i. The date, place as defined in the permit, and time of sampling or measurements;
 - ii. The date(s) analyses were performed;
 - iii. The name of the company or entity that performed the analyses;
 - iv. A description of the analytical techniques or methods used;
 - v. The results of such analyses; and
 - vi. The operating conditions as existing at the time of sampling or measurement.
 - b. Retention of records of all required monitoring data and support information for a period of at least 5 years from the date of the monitoring sample, measurement, report, or application. Support information includes all calibration and maintenance records and all original strip-chart recordings for continuous monitoring instrumentation, and copies of all reports required by the permit.
5. With respect to reporting, the permit shall incorporate all applicable reporting requirements including reporting requirements established pursuant to R18-2-306.01 and require the following:
 - a. Submittal of reports of any required monitoring at least every 6 months. All instances of deviations from permit requirements shall be clearly identified in such reports. All required reports shall be certified by a responsible official consistent with R18-2-304(H) and 309(A)(5).
 - b. Prompt reporting of deviations from permit requirements, including those attributable to upset conditions as defined in the permit, the probable cause of such deviations, and any corrective actions or preventive measures taken. Notice in accordance with subparagraph (E)(3)(d) of this Section shall be considered prompt for the purposes of this subparagraph.
6. A permit condition prohibiting emissions exceeding any allowances that the source lawfully holds under title IV of the Act or the regulations promulgated thereunder.
 - a. No permit revision shall be required for increases in emissions that are authorized by allowances acquired pursuant to the acid rain program, provided that such increases do not require a permit revision under any other applicable requirement.
 - b. No limit shall be placed on the number of allowances held by the source. The source may not, however, use allowances as a defense to noncompliance with any other applicable requirement.
 - c. Any such allowance shall be accounted for according to the procedures established in regulations promulgated under Title IV of the Act.
 - d. Any permit issued pursuant to the requirements of this Chapter and title V of the Act to a unit subject to the provisions of Title IV of the Act shall include conditions prohibiting all of the following:
 - i. Annual emissions of sulfur dioxide in excess of the number of allowances to emit sulfur dioxide held by the owners or operators of the unit or the designated representative of the owners or operators,
 - ii. Exceedances of applicable emission rates,
 - iii. The use of any allowance prior to the year for which it was allocated,
 - iv. Contravention of any other provision of the permit.
7. A severability clause to ensure the continued validity of the various permit requirements in the event of a challenge to any portions of the permit.
8. Provisions stating the following:
 - a. The permittee shall comply with all conditions of the permit including all applicable requirements of Arizona air quality statutes and the air quality rules. Any permit noncompliance is grounds for enforcement action; for a permit termination, revocation and reissuance, or revision; or for denial of a permit renewal application. Noncompliance with any federally enforceable requirement in a permit constitutes a violation of the Act;
 - b. Need to halt or reduce activity not a defense. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit;
 - c. The permit may be revised, reopened, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit revision, revocation and reissuance, or termination, or of a notification of planned changes or anticipated noncompliance does not stay any permit condition;
 - d. The permit does not convey any property rights of any sort, or any exclusive privilege;
 - e. The permittee shall furnish to the Director, within a reasonable time, any information that the Director may request in writing to determine whether cause exists for revising, revoking and reissuing, or ter-

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- minating the permit or to determine compliance with the permit. Upon request, the permittee shall also furnish to the Director copies of records required to be kept by the permit. For information claimed to be confidential, the permittee shall furnish a copy of such records directly to the Administrator along with a claim of confidentiality;
- f. For any major source operating in a nonattainment area for any pollutant(s) for which the source is classified as a major source, the source shall comply with reasonably available control technology.
9. A provision to ensure that the source pays fees to the Director pursuant to A.R.S. § 49-426(E) and the rules adopted thereunder.
 10. A provision stating that no permit revision shall be required, under any approved economic incentives, marketable permits, emissions trading and other similar programs or processes for changes that are provided for in the permit. ~~This provision shall not apply to emissions trading between sources as provided in the applicable implementation plan.~~
 11. Terms and conditions for reasonably anticipated operating scenarios identified by the source in its application as approved by the Director. Such terms and conditions:
 - a. Shall require the source, contemporaneously with making a change from one operating scenario to another, to record in a log at the permitted facility a record of the scenario under which it is operating;
 - b. Shall extend the permit shield described in R18-2-325 to all terms and conditions under each such operating scenario; and
 - c. Shall ensure that the terms and conditions of each such alternative scenario meet all applicable requirements and the requirements of this Chapter.
 12. Terms and conditions, if the permit applicant requests them, as approved by the Director, for the trading of emissions increases and decreases in the permitted facility, to the extent that the applicable requirements provide for trading such increases and decreases without a case-by-case approval of each emissions trade. Such terms and conditions:
 - a. Shall include all terms required under subsections (A) and (C) of this section to determine compliance;
 - b. Shall not extend the permit shield described in subsection (D) of this section to all terms and conditions that allow such increases and decreases in emissions;
 - c. Shall not include trading involving emission units for which emissions are not quantifiable or for which there are no replicable procedures to enforce the emissions trades; and
 - d. Shall meet all applicable requirements and requirements of this Chapter.
 13. Terms and conditions, if the permit applicant requests them and they are approved by the Director, setting forth intermittent operating scenarios including potential periods of downtime. If such terms and conditions are included, the state's emissions inventory shall not reflect the zero emissions associated with the periods of downtime.
 14. If a permit applicant requests it, the Director shall issue permits that contain terms and conditions allowing for the trading of emission increases and decreases in the permitted facility solely for the purpose of complying with a federally enforceable emission cap that is established in the permit independent of otherwise applicable requirements. The permit applicant shall include in its application proposed replicable procedures and permit terms that ensure the emissions trades are quantifiable and enforceable. The Director shall not be required to include in the emissions trading provisions any emissions units for which emissions are not quantifiable or for which there are no replicable procedures to enforce the emissions trades. The permit shall also require compliance with all applicable requirements. Changes made under this paragraph (14) shall not include modifications under any provision of title I of the Act and may not exceed emissions allowable under the permit. The terms and conditions shall provide for notice that conforms to R18-2-317(D) and (E) and that describes how the increases and decreases in emissions will comply with the terms and conditions of the permit.
15. Such other terms and conditions as are required by the Act, A.R.S. Title 49, Chapter 3, Articles 1 and 2 and the rules adopted pursuant thereto.
- B. Federally-enforceable Requirements**
1. The following permit conditions shall be enforceable by the Administrator and citizens under the Act:
 - a. Except as provided in paragraph (B)(2) of this Section, all terms and conditions in a Class I permit, including any provisions designed to limit a source's potential to emit.
 - b. Terms or conditions in a Class II permit setting forth federal applicable requirements.
 - c. Terms and conditions in any permit which are entered into voluntarily pursuant to R18-2-306.01, as follows:
 - i. Emissions limitations, controls or other requirements.
 - ii. Monitoring, record keeping and reporting requirements associated with the emissions limitations, controls or other requirements in subdivision (i) of this subparagraph.
 2. Notwithstanding subparagraph (1)(a) of this subsection, the Director shall specifically designate as not being federally enforceable under the Act any terms and conditions included in a Class I permit that are not required under the Act or under any of its applicable requirements.
- C. All permits shall contain a compliance plan that meets the requirements of R18-2-309.**
- D. Each permit shall include the applicable permit shield provisions set forth in R18-2-325.**
- E. Emergency provision**
1. An "emergency" means any situation arising from sudden and reasonably unforeseeable events beyond the control of the source, including acts of God, which situation requires immediate corrective action to restore normal operation, and that causes the source to exceed a technology-based emission limitation under the permit, due to unavoidable increases in emissions attributable to the emergency. An emergency shall not include non-compliance to the extent caused by improperly designed equipment, lack of preventative maintenance, careless or improper operation, or operator error.
 2. An emergency constitutes an affirmative defense to an action brought for noncompliance with such technology-based emission limitations if the conditions of paragraph (3) of this subsection are met.

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3. The affirmative defense of emergency shall be demonstrated through properly signed, contemporaneous operating logs, or other relevant evidence that:
 - a. An emergency occurred and that the permittee can identify the cause(s) of the emergency;
 - b. The permitted facility was at the time being properly operated;
 - c. During the period of the emergency the permittee took all reasonable steps to minimize levels of emissions that exceeded the emissions standards or other requirements in the permit; and
 - d. The permittee submitted notice of the emergency to the Director by certified mail, facsimile or hand delivery within 2 working days of the time when emission limitations were exceeded due to the emergency. This notice shall contain a description of the emergency, any steps taken to mitigate emissions, and corrective action taken.
 4. In any enforcement proceeding, the permittee seeking to establish the occurrence of an emergency has the burden of proof.
 5. This provision is in addition to any emergency or upset provision contained in any applicable requirement.
- F. A class I permit issued to a major source shall require that revisions be made pursuant to R18-2-321 to incorporate additional applicable requirements adopted by the Administrator pursuant to the Act that become applicable to a source with a permit with a remaining permit term of 3 or more years. No revision shall be required if the effective date of the applicable requirement is after the expiration of the permit. The revisions shall be made as expeditiously as practicable, but not later than 18 months after the promulgation of such standards and regulations. Any permit revision required pursuant to this subsection shall comply with provisions in R18-2-322 for permit renewal and shall reset the 5-year permit term.

R18-2-307. through R18-2-319. No change.

R18-2-320. Significant Permit Revisions

- A. Significant revision procedures shall be used for applications requesting permit revisions that do not qualify as minor revisions or as administrative amendments. Every significant change in existing monitoring permit terms or conditions and every relaxation of reporting or record keeping permit terms or conditions shall follow significant revision procedures.
- B. All modifications to major sources of federally listed hazardous air pollutants, and any reconstruction of a source, or a process or production unit, under section 112(g) of the Act and regulations promulgated thereunder, shall follow significant revision procedures and any rules adopted pursuant to A.R.S. § 49-426.03.
- C. All modifications to sources subject to rules promulgated pursuant to A.R.S. § 49-426.06 shall follow the revision procedures provided in those rules.
- D. Significant permit revisions shall meet all requirements of this Article for applications, public participation, review by affected States, and review by the Administrator as they apply to permit issuance and renewal.
- E. When an existing source applies for a significant permit revision to revise its permit from a Class II permit to a Class I permit, the director shall issue the entire permit, and not just the portion being revised, in accordance with Class I permit application, content, and issuance requirements, including requirements for public, affected state, and EPA review, contained in R18-2-307 and R18-2-330.

- FF.** The Director shall process the majority of significant permit revision applications received each calendar year within 9 months of receipt of a complete permit application but in no case longer than 18 months. Applications for which the Director undertakes accelerated processing pursuant to R18-2-326(N) shall not be included for this requirement.

R18-2-321. through R18-2-330. No change.

R18-2-331. Material Permit Conditions

- A. For the purposes of A.R.S. §§ 49-464(G) and 49-514(G), a "material permit condition" shall mean a condition which satisfies all of the following:
 1. The condition is in a permit or permit revision issued by the Director or a control officer after the effective date of this Section.
 2. The condition is identified within the permit as a material permit condition.
 3. The condition is 1 of the following:
 - a. An enforceable emission standard imposed to avoid classification as a major modification or major source or to avoid triggering any other applicable requirement.
 - b. A requirement to install, operate or maintain a maximum achievable control technology or hazardous air pollutant reasonably available control technology required pursuant to the requirements of A.R.S. § 49-426.06.
 - c. A requirement for the installation or certification of a monitoring device.
 - d. A requirement for the installation of air pollution control equipment.
 - e. A requirement for the operation of air pollution control equipment.
 - f. An opacity standard required by section 111 or Title I, part C or D, of the Act.
 4. Violation of the condition is not covered by subsections (A) through (F), or (H) through (J) of A.R.S. § 49-464 or subsections (A) through (F), or (H) through (J) of A.R.S. § 49-514.
- B. For the purposes of subparagraphs (A)(3)(c), (d), and (e) of this Section, a permit condition shall not be material where the failure to comply resulted from circumstances which were outside the control of the source. As used in this section, "circumstances outside the control of the source" shall mean circumstances where the violation resulted from a sudden and unavoidable breakdown of the process or the control equipment, resulted from unavoidable conditions during a start up or shut down or resulted from upset of operations.
- C. For purposes of this section, the term "emission standard" shall have the meaning set forth at A.R.S. §§ 49-464(U) and 49-514(T).

**ARTICLE 11. FEDERAL HAZARDOUS AIR
POLLUTANTS**

R18-2-1101. National Emission Standards for Hazardous Air Pollutants (NESHAPs)

- A. Except as provided in R18-2-1102, the following subparts of 40 CFR 61, National Emission Standards for Hazardous Air Pollutants (NESHAPs) and all accompanying appendices, adopted as of July 1, ~~1996~~1997, and no future editions or amendments, 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.
 1. Subpart A - General Provisions.
 2. Subpart C - Beryllium.

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3. Subpart D - Beryllium Rocket Motor Firing.
 4. Subpart E - Mercury.
 5. Subpart F - Vinyl Chloride.
 6. Subpart J - Equipment Leaks (Fugitive Emission Sources) of Benzene.
 7. Subpart L - Benzene Emissions from Coke By-Product Recovery Plants.
 8. Subpart M - Asbestos.
 9. Subpart N - Inorganic Arsenic Emissions from Glass Manufacturing Plants.
 10. Subpart O - Inorganic Arsenic Emissions from Primary Copper Smelters.
 11. Subpart P - Inorganic Arsenic Emissions from Arsenic Trioxide and Metallic Arsenic Production.
 12. Subpart V - Equipment Leaks (Fugitive Emission Sources).
 13. Subpart Y - Benzene Emissions From Benzene Storage Vessels.
 14. Subpart BB - Benzene Emissions from Benzene Transfer Operations.
 15. Subpart FF - Benzene Waste Operations.
- B.** Except as provided in R18-2-1102, the following subparts of 40 CFR 63, NESHAPs for Source Categories and all accompanying appendices, adopted as of July 1, ~~1996~~1997, and no future editions or amendments, 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.
1. Subpart A - General Provisions.
 2. Subpart B - Requirements for Control Technology Determinations for Major Sources in Accordance with Clean Air Act Sections 112(g) and 112(j).
 3. Subpart D - Regulations Governing Compliance Extensions for Early Reductions of Hazardous Air Pollutants.
 4. Subpart F - National Emission Standards for Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry.
 5. Subpart G - National Emission Standards for Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry for Process Vents, Storage Vessels, Transfer Operations, and Wastewater.
 6. Subpart H - National Emission Standards for Organic Hazardous Air Pollutants for Equipment Leaks.
 7. Subpart I - National Emission Standards for Organic Hazardous Air Pollutants for Certain Processes Subject to the Negotiated Regulation for Equipment Leaks.
 8. Subpart L - National Emission Standards for Coke Oven Batteries.
 9. Subpart M - National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities.
 10. Subpart N - Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks.
 11. Subpart O - Ethylene Oxide Emissions Standards for Sterilization Facilities.
 12. Subpart Q - Industrial Process Cooling Towers.
 13. Subpart R - Gasoline Distribution Facilities (Bulk Gasoline Terminals and Pipeline Breakout Stations).
 14. Subpart T - Halogenated Solvent Cleaning.
 15. Subpart W - Epoxy Resins Production and Non-Nylon Polyamides Production.
 16. Subpart X - Secondary Lead Smelting.
 17. Subpart CC - Petroleum Refineries.
 18. Subpart EE - Magnetic Tape Manufacturing Operations.
 19. Subpart GG - Aerospace Manufacturing and Rework Facilities.
 20. Subpart JJ - Wood Furniture Manufacturing Operations.
 21. Subpart KK - Printing and Publishing Industry.
- R18-2-1102. No change.**