

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. Due to time restraints, the Secretary of State's Office will no longer edit the text of proposed rules. We will continue to make numbering and labeling changes as necessary.

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.

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TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 19. ARIZONA STATE BOARD OF NURSING

PREAMBLE

- Sections affected:** R4-19-513
Rulemaking action: New Section
- The specific authority for the rulemaking, including both authorizing statute (general) and the statutes the rules are implementing (specific):**
Authorizing statute: A.R.S. §§ 32-1606(A)(1); 32-1601(10)(e).
Implementing statutes: Not applicable.
- A list of all previous notices appearing in the Register addressing the proposed rule:**
Notice of Rulemaking Docket Opening: 4 A.A.R.1288, June 5, 1998.
- The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Name	Janet M. Walsh, RN, JD Associate Director
Address:	Arizona State Board of Nursing 1651 E. Morten, Suite 150 Phoenix, Arizona 85020
Telephone:	(602) 331-8111, Ext. 145
Fax:	(602) 906-9365
- An explanation of the rule, including the agency's reason for initiating the rule:**
The proposed rule is necessary because the Board requires prescriptive authority for advance practice nurses writing orders on patient medical records. R4-19-507 provides that nurse practitioners must have prescribing and dispensing authority. R4-19-507, however, applies only to nurse practitioners, and there is no comparable rule governing the practice of certified registered nurse anesthetists of writing orders on patient medical records. Therefore, the Board believes R4-19-513 is necessary.
- A reference to any study that the agency proposes to rely on in its evaluation of or justification for the proposed rule and where the public may obtain or review the study, all data underlying each study, any analysis of the study and other supporting material:**
None at the present time.
- A showing of good cause why the rule is necessary to promote a state-wide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**
Not applicable.

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8. The preliminary summary of the economic, small business, and consumer impact:

The proposed rule will have some economic impact on certified registered nurse anesthetists who wish to obtain prescribing authority. Currently, nurse practitioners are required to pay \$50.00 to obtain prescribing and dispensing authority. It is anticipated that the fee for prescribing privileges for certified registered nurse anesthetists will be comparable. The Board estimates that approximately 200 certified registered nurse anesthetists will apply for prescribing authority, generating approximately \$10,000 in revenue for the Board. Additionally, the Secretary of State will incur costs for publication of the rule, and the Board will incur costs in promulgating the rule, as well as in reviewing the credentials of certified registered nurse anesthetists who apply for prescribing authority.

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

Name: Janet M. Walsh, RN, JD
Associate Director

Address: Arizona State Board of Nursing
1651 E. Morten, Suite 150
Phoenix, Arizona 85020

Telephone: (602) 331-8111, Ext. 145

Fax: (602) 906-9365

10. The time, place, and nature of the proceedings for the making, 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:

A public hearing on the proposed rulemaking will be held on September 16, 1999, at 1:00 p.m. in the Board of Medical Examiners Conference Room, located at 1651 E. Morten, Suite 210, Phoenix, Arizona. The Board will accept written comments until the close of record on September 16, 1999 at 5:00 p.m.

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:

ARTICLE 5. EXTENDED AND ADVANCED NURSING PRACTICE

Sections

R4-19-513 Prescribing Authority of a Certified Registered Nurse Anesthetist

ARTICLE 5. EXTENDED AND ADVANCED NURSING PRACTICE

R4-19-513. Prescribing Authority of a Certified Registered Nurse Anesthetist

A. The Board shall authorize a CRNA to prescribe medication only if it is in the best interest of the public and the CRNA meets the following requirements:

1. Current licensure as a professional nurse in Arizona in good standing;
2. Graduation from an educational program accredited by the American Association of Nurse Anesthetists' Council on Accreditation of Nurse Anesthesia Educational Programs or its predecessors and that has as its objective the preparation of nurses to practice nurse anesthesia;
3. Initial certification by the American Association of Nurse Anesthetists' Council on Certification of Nurse Anesthetists and recertification, as applicable, by the American Association of Nurse Anesthetists' Council on Recertification of Nurse Anesthetists;
4. Submission of a completed application form provided by the Board and an application packet that includes the following information and documentation:
 - a. Name, address, and phone number;
 - b. Professional nurse license number;
 - c. Certification number;
 - d. Business address and phone number;
 - e. Documentation verifying current certification by the American Association of Nurse Anesthetists' Council on Certification of Nurse Anesthetists, or as applicable, by the American Association of Nurse Anesthetists' Council on Recertification of Nurse Anesthetists;
 - f. Responses to questions addressing the following subjects:

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- i. Prior disciplinary action.
 - ii. Pending investigation or disciplinary action.
 - iii. Pending criminal charges.
 - iv. Prior misdemeanor or undesignated offense conviction.
 - v. Prior felony conviction and date of absolute discharge of sentence.
 - vi. Use of chemical substances, and
 - vii. Prior civil judgment resulting from malpractice or negligence in connection with practice in a health care profession;
 - g. Applicant's sworn statement verifying the truthfulness of the information provided; and
 - h. Applicable fees.
- B.** An applicant who is denied medication prescribing authority may request a hearing by filing a written request with the Board within 30 days of service of the Board's order denying the application for prescribing authority. Board hearings shall comply with A.R.S. Title 41, Chapter 6, Article 10, and 4 A.A.C. 19, Article 6.
- C.** A CRNA who has been granted prescribing authority may prescribe drugs or medication to be administered pre-operatively, post-operatively, or as part of a procedure that will be or has been undertaken.
- D.** A CRNA with prescribing authority shall ensure that all prescription orders contain the following:
- 1. The CRNA's name;
 - 2. The prescription date;
 - 3. The name of the patient and patient identification number; and
 - 4. The name, strength, dosage, and route of administration.

NOTICE OF PROPOSED RULEMAKING

TITLE 7. EDUCATION

**CHAPTER 1. STATE BOARD OF DIRECTORS FOR COMMUNITY
COLLEGES OF ARIZONA**

PREAMBLE

- | | |
|--|--|
| 1. <u>Sections Affected</u>
R7-1-711 | <u>Rulemaking Action</u>
New Section |
|--|--|
- 2. The specific authority for the rulemaking, including both the authorizing statute and the statutes the rules are implementing:**
Authorizing statute: A.R.S. 15-1424
Implementing statute: A.R.S. 15-1424
- 3. A list of all previous notices appearing in the Register addressing the proposed rule:**
Notice of Rulemaking Docket Opening: 5 A.A.R. 2264, July 16, 1999.
- 4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
- | | |
|------------|--|
| Name: | Thomas J. Saad |
| Address: | State Board of Directors for Community Colleges of Arizona
3225 North Central Ave., Suite 1220
Phoenix, AZ 85012 |
| Telephone: | (602) 255-4037 |
| Fax: | (602) 279-3464 |
- 5. An explanation of the rule, including the agency's reasons for initiating the rule:**
Establishes guidelines for community colleges that provide educational services to counties without an established community college district. Provides contract requirements between county boards of supervisors and community college districts providing services; authorizes the payment of state aid; and, requires state board to approve tuition and fees.

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6. **A reference to any study that the agency proposes to rely on its evaluation of or justification for the proposed rule and where the public may obtain or review the study, all data underlying each study, any analysis of the study and other supporting material:**

None.

7. **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:**

The new Section will not diminish the authority of college districts. They have been operating under similar, but less formal, provisions.

8. **The preliminary summary of the economic, small business, and consumer impact:**

The proposed rule will not adversely impact small business or consumers.

9. **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: Thomas J. Saad

Address: State Board of Directors for Community Colleges of Arizona
3225 N. Central Ave., Suite 1220
Phoenix, AZ 85012

Telephone: (602) 255-4037

Fax: (602) 279-3464

10. **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:**

Oral Proceedings/public hearing is scheduled as follows:

Date: September 17, 1999

Time: 1 p.m.

Location: 1700 West Washington, Room 200
Phoenix, AZ

11. **Any other matters prescribed by statute that are applicable to the specific agency:**

None

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

None

13. **Full text of the rules follows:**

TITLE 7. EDUCATION

**CHAPTER 1. STATE BOARD OF DIRECTORS FOR COMMUNITY
COLLEGES OF ARIZONA**

ARTICLE 7. INSTRUCTION, FACULTY, AND STAFF

Section:

R7-1-711. Providing Community College Services to a County Without a Community College District

ARTICLE 7. INSTRUCTION, FACULTY, AND STAFF

R7-1-711. Providing Community College Services to a County Without a Community College District

A. A county without a community college district (unorganized county) may contract for in-county services with 1 or more community college districts.

B. The contract between the unorganized county board of supervisors and the community college district for in-county services shall:

1. Comply with the requirement of A.R.S. § 15-1470 (Extension courses; intergovernmental agreements) and A.R.S. § 11-952 through 11-954 (Intergovernmental agreement provisions).
2. Be approved by the community college district governing board and the unorganized county's board of supervisors prior to the services being offered.
3. Be approved by the State Board.

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- C.** For all services covered by this rule:
1. The State Board shall approve tuition and fees for students enrolled in credit courses. The community college district may set the amount of remuneration for all other services.
 2. State aid may be claimed for credit courses.
 3. An annual report for the previous fiscal year shall be submitted to the State Board by September 1 of each year. The annual report shall include locations where services are provided within the unorganized county and aggregate enrollment.
- D.** In-county services include all services that are offered within the unorganized county for which a physical presence within the county is maintained. Services delivered via education technology methods that do not require a designated receive site are exempt from this rule, but are subject to R7-1-714.

NOTICE OF PROPOSED RULEMAKING

TITLE 9. HEALTH SERVICES

**CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM (AHCCCS)
ADMINISTRATION**

PREAMBLE

- | 1. <u>Sections Affected</u> | <u>Rulemaking Action</u> |
|------------------------------------|---------------------------------|
| R9-22-101 | Amend |
| R9-22-112 | Repeal |
| R9-22-112 | New Section |
| R9-22-204 | Amend |
| R9-22-210 | Amend |
| R9-22-215 | Amend |
| R9-22-705 | Amend |
| R9-22-1201 | Repeal |
| R9-22-1201 | New Section |
| R9-22-1202 | Repeal |
| R9-22-1202 | New Section |
| R9-22-1203 | Repeal |
| R9-22-1203 | New Section |
| R9-22-1204 | Repeal |
| R9-22-1204 | New Section |
| R9-22-1205 | Repeal |
| R9-22-1205 | New Section |
| R9-22-1206 | Repeal |
| R9-22-1206 | New Section |
| R9-22-1207 | Repeal |
| R9-22-1207 | New Section |
| R9-22-1208 | New Section |
- 2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**
- Authorizing statute: A.R.S. § 36-2903.01
- Implementing statute: A.R.S. § 36-2907(E)
- 3. A list of all previous notices appearing in the Register addressing the proposed rule:**
- Notice of Rulemaking Docket Opening: 5 A.A.R. 461, February 5, 1999; and 5 A.A.R. 2013, June 18, 1999.
- 4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
- Name: Cheri Tomlinson, Federal and State Policy Administrator
- Address: AHCCCS Administration, Office of Policy Analysis and Coordination
801 East Jefferson Street, Mail Drop 4200
Phoenix, AZ 85034

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Telephone: (602) 417-4198

Fax: (602) 256-6756

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

Four Articles in 9 A.A.C. 22 have been opened for the following reasons:

- To make the language comply with Laws 1999, Ch. 313, § 36, which shifts the responsibility for behavioral health services for non-seriously mentally ill (non-SMI) 18, 19 and 20 year old members from the AHCCCS health plans to the Arizona Department of Health Services (ADHS);
- To make the language conform with current agency practice regarding behavioral health services;
- To make the language comply with the Secretary of State's requirements; and
- To make the language more clear, concise and understandable.

6. A reference to any study that the agency proposes to rely on in its evaluation of or justification for the proposed rule and where the public may obtain or review the study, all data underlying each study, any analysis of the study and other supporting material:

Not applicable.

7. 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.

8. The preliminary summary of the economic, small business, and consumer impact:

The AHCCCS Administration, ADHS, each Regional Behavioral Health Authority (RBHA), and each AHCCCS health plan will be moderately impacted by the changes in rule language due to the shift in responsibility for the 18, 19 and 20 year old non-SMI population from the health plans to ADHS. The Administration will have to implement several operational changes as well as monitor the transition of this population from 1 delivery system to another. ADHS will have to amend its contract with each RBHA as well as coordinate and monitor the transition of members from the health plans to the RBHAs. Each RBHA will have to update its contracts with its providers as well as transition members from 1 provider to another. AHCCCS providers that are business entities may be minimally affected because they could lose or gain members due to the change. AHCCCS members that are 18, 19 and 20 year old non-SMI members that are receiving behavioral health services when the change goes into effect will be moderately impacted due to the transition from the health plan system to the RBHA system.

In addition, the AHCCCS Administration, the ADHS and each RBHA will be impacted by the change in state law that states the Office of Administrative Hearings (OAH) shall be responsible for conducting evidentiary hearings involving the AHCCCS program effective July 1, 1999. Each entity will be impacted because of the change in the hearing process.

9. 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: Cheri Tomlinson, Federal and State Policy Administrator

Address: AHCCCS Administration, Office of Policy Analysis and Coordination
801 East Jefferson Street, Mail Drop 4200
Phoenix, AZ 85034

Telephone: (602) 417-4198

Fax: (602) 256-6756

10. The time, place, and nature of the proceedings for the making, 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:

Date: September 29, 1999

Time: 1 p.m.

Location: Arizona Department of Health Services/Behavioral Health Services
2122 East Highland, Suite 100
Phoenix, AZ 85016
Fir Conference Room

Location: Community Partnership of Southern Arizona
4575 East Broadway Road

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Tucson, AZ 85711
Pima Conference Room

Location: Northern Arizona Regional Behavioral Health Authority
125 East Elm Street
Flagstaff, AZ 86001
Downstairs/Main Conference Room

Nature: Teleconference oral proceeding

Written comments shall be submitted not later than 5 p.m., September 29, 1999, to the following person:

Name: Cheri Tomlinson, Federal and State Policy Administrator

Address: AHCCCS Administration, Office of Policy Analysis and Coordination
801 East Jefferson Street, Mail Drop 4200
Phoenix, AZ 85034

Telephone: (602) 417-4198

Fax: (602) 256-6756

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:

42 CFR 456 as of August 23, 1996, incorporated in R9-22-1206.

42 U.S.C. 1396u-2, as of August 5, 1997, incorporated in R9-22-210 and R9-22-705.

13. The full text of the rules follows:

TITLE 9. HEALTH SERVICES

**CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM (AHCCCS)
ADMINISTRATION**

ARTICLE 1. DEFINITIONS

Sections

- R9-22-101. Location of Definitions
- R9-22-112. Behavioral Health Services Related Definitions

ARTICLE 2. SCOPE OF SERVICES

Sections

- R9-22-204. Inpatient General Hospital Services
- R9-22-210. Emergency Medical and Behavioral Health Services
- R9-22-215. Other Medical Professional Services

ARTICLE 7. STANDARDS FOR PAYMENTS

Sections

- R9-22-705. Payments by Contractors

ARTICLE 12. BEHAVIORAL HEALTH SERVICES

Sections

- ~~R9-22-1201. Definitions Repealed~~
- ~~R9-22-1201. General Requirements~~
- ~~R9-22-1202. Eligibility Repealed~~
- R9-22-1202. ADHS and Health Plan Responsibilities
- ~~R9-22-1203. Service Delivery System and Referral Repealed~~
- R9-22-1203. Eligibility for Covered Services
- ~~R9-22-1204. Covered Behavioral Health Services for Eligible Persons and Members Repealed~~
- R9-22-1204. General Service Requirements

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R9-22-1205.	Qualifications and Standards of Participation for Service Providers <u>Repealed</u>
<u>R9-22-1205.</u>	<u>Scope of Behavioral Health Services</u>
R9-22-1206.	Payments <u>Repealed</u>
<u>R9-22-1206.</u>	<u>General Provisions and Standards for Service Providers</u>
R9-22-1207.	Grievance and Appeal Process <u>Repealed</u>
<u>R9-22-1207.</u>	<u>Standards for Payments</u>
<u>R9-22-1208.</u>	<u>Grievance and Appeal Process</u>

ARTICLE 1. DEFINITIONS

R9-22-101. Location of Definitions

A. Location of definitions. Definitions applicable to this Chapter are found in the following:

<i>Definition</i>	<i>Section or Citation</i>
1. "210"	R9-22-114
2. "1931"	R9-22-114
3. "1-time income"	R9-22-116
4. "1st-party liability"	R9-22-110
5. "3-month income period"	R9-22-116
6. "3rd-party"	R9-22-110
7. "3rd-party liability"	R9-22-110
8. "Accommodation"	R9-22-107
9. "Act"	R9-22-114
10. "Acute mental health services"	R9-22-112
11. "Adequate notice"	R9-22-114
<u>12. "ADHS"</u>	<u>R9-22-112</u>
12-13. "Administration" R9-22-106, R9-22-114, and A.R.S. § 36-2901	
13-14. "Adverse action"	R9-22-114
14-15. "AEC"	R9-22-117
15-16. "Affiliated corporate organization"	R9-22-106
16-17. "Aged"	R9-22-115
17-18. "Aggregate"	R9-22-107
18-19. "AHCCCS"	R9-22-101
19-20. "AHCCCS hearing officer"	R9-22-108
20-21. "AHCCCS inpatient hospital day or days of care"	R9-22-107
21-22. "Ambulance"	R9-22-102
22-23. "Ancillary department"	R9-22-107
23-24. "Annual enrollment choice"	R9-22-117
24-25. "Appeal"	R9-22-108
25-26. "Appellant"	R9-22-114
26-27. "Applicant"	R9-22-101
27-28. "Application"	R9-22-101
28-29. "Assignment"	R9-22-101
29-30. "Assistance unit"	R9-22-114
30-31. "Authorized representative"	R9-22-114
31-32. "Auto-assignment algorithm"	R9-22-117
32-33. "Baby Arizona"	R9-22-114
34. "Behavior management services"	<u>R9-22-112</u>
35. "Behavioral health paraprofessional"	<u>R9-22-112</u>
36. "Behavioral health professional"	<u>R9-22-112</u>
37. "Behavioral health service"	<u>R9-22-112</u>
38. "Behavioral health technician"	<u>R9-22-112</u>
33-39. "BHS"	R9-22-114
34-40. "Billed charges"	R9-22-107
35-41. "Blind"	R9-22-115
42. "Board eligible for psychiatry"	<u>R9-22-112</u>
36-43. "Bona fide funeral agreement"	R9-22-114
37-44. "Burial plot"	R9-22-114
38-45. "Capital costs"	R9-22-107
39-46. "Capped fee-for-service"	R9-22-101

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<u>40-47</u> .“Caretaker relative”	R9-22-114
<u>48</u> . “ <u>Case management services</u> ”	<u>R9-22-112</u>
<u>41-49</u> .“Case record”	R9-22-101
<u>42-50</u> .“Cash assistance”	R9-22-114
<u>43-51</u> .“Categorically eligible”	A.R.S. §§ 36-2901(4)(b) and 36-2934
<u>44-52</u> .“Certification error”	A.R.S. § 36-2905.01
<u>45-53</u> .“Certification period”	R9-22-115 and R9-22-116
<u>54</u> . “ <u>Certified psychiatric nurse practitioner</u> ”	<u>R9-22-112</u>
<u>46-55</u> .“Child welfare agency”	R9-22-114
<u>47-56</u> .“Clean claim”	A.R.S. § 36-2904
<u>57</u> . “ <u>Clinical supervision</u> ”	<u>R9-22-112</u>
<u>48-58</u> .“CMDP”	R9-22-117
<u>49-59</u> .“Continuous stay”	R9-22-101
<u>50-60</u> .“Contract”	R9-22-101
<u>51-61</u> .“Contractor”	R9-22-101
<u>52-62</u> .“Contractor of record”	R9-22-101
<u>53-63</u> .“Copayment”	R9-22-107
<u>54-64</u> .“Cost-to-charge ratio”	R9-22-107
<u>55-65</u> .“Countable income”	R9-22-116
<u>56-66</u> .“County eligibility staff”	R9-22-116
<u>57-67</u> .“Covered charges”	R9-22-107
<u>58-68</u> .“Covered services”	R9-22-102
<u>59-69</u> .“CPT”	R9-22-107
<u>60-70</u> .“CRS”	R9-22-114
<u>61-71</u> .“Date of determination”	R9-22-116
<u>62-72</u> .“Date of discontinuance”	R9-22-116
<u>63-73</u> .“Date of enrollment action”	R9-22-117
<u>64-74</u> .“Day”	R9-22-101
<u>65-75</u> .“DCSE”	R9-22-114
<u>66-76</u> .“Deductible medical expense”	R9-22-116
<u>67-77</u> .“Deemed application date”	R9-22-116
<u>78</u> . “ <u>De novo hearing</u> ”	<u>R9-22-112</u>
<u>68-79</u> .“Dentures”	R9-22-102
<u>69-80</u> .“Department”	R9-22-114
<u>70-81</u> .“Dependent child”	R9-22-114 and R9-22-116
<u>71-82</u> .“DES”	R9-22-101
<u>72-83</u> .“Determination”	R9-22-116
<u>73-84</u> .“Diagnostic services”	R9-22-102
<u>74-85</u> .“Disabled”	R9-22-115
<u>75-86</u> .“Discontinuance”	R9-22-116
<u>76-87</u> .“Discussions”	R9-22-106
<u>77-88</u> .“Disenrollment”	R9-22-117
<u>78-89</u> .“District Medical Consultant”	R9-22-114
<u>79-90</u> .“DME”	R9-22-102
<u>80-91</u> .“DRI inflation factor”	R9-22-107
<u>81-92</u> .“E.P.S.D.T. services”	R9-22-102
<u>82-93</u> .“EAC”	R9-22-101
<u>83-94</u> .“Earned income”	R9-22-116
<u>84-95</u> .“Educational income”	R9-22-116
<u>85-96</u> .“ELIC”	R9-22-101
<u>86-97</u> .“Eligibility determination date”	R9-22-114
<u>87-98</u> .“Eligible assistance children”	A.R.S. § 36-2905.03(B)
<u>88-99</u> .“Eligible applicant”	A.R.S. § 36-2901(4)
<u>89-100</u> .“Eligible low income children”	A.R.S. § 36-2905.03(C) and (D)
<u>90-101</u> .“Emancipated minor”	R9-22-116
<u>91-102</u> .“Emergency medical condition”	42 U.S.C. 1396b(v)
<u>92-103</u> .“Emergency medical services”	R9-22-102
<u>93-104</u> .“Encounter”	R9-22-107
<u>94-105</u> .“Enrollment”	R9-22-117

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95-106. "Enumeration"	R9-22-101
96-107. "Equity"	R9-22-101
<u>108.</u> "Evaluation"	<u>R9-22-112</u>
97-109. "Expressly emancipated minor"	R9-22-116
98-110. "FAA" or "Family Assistance Administration"	R9-22-114
99-111. "Facility"	R9-22-101
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B. General definitions. In addition to definitions contained in A.R.S. § 36-2901, the words and phrases in this Chapter have the following meanings unless the context explicitly requires another meaning:

1. “AHCCCS” means the Arizona Health Care Cost Containment System, which is composed of the Administration, contractors, and other arrangements through which health care services are provided to an eligible person.
2. “Applicant” means a person who submits or whose representative submits, a written, signed, and dated application for AHCCCS benefits that has not been approved or denied.
3. “Application” means an official request for medical assistance made under this Chapter.
4. “Assignment” means enrollment of an eligible person with a contractor by the Administration.
5. “Capped fee-for-service” means the payment mechanism by which a provider of care is reimbursed upon submission of a valid claim for a specific AHCCCS covered service and equipment provided to an eligible applicant. A payment is made in accordance with an upper, or capped, limit established by the Director.
6. “Case record” means the file and all documents in the file that are used to establish eligibility.
7. “Categorically eligible” means a person who is eligible as defined by A.R.S. §§ 36-2901(4)(b) and 36-2934.
8. “Continuous stay” means the period of time during which an eligible person receives inpatient hospital services without interruption beginning with the date of admission and ending with the date of discharge or date of death.
9. “Contract” means a written agreement entered into between a person, an organization, or other entity and the Administration, to provide health care services to a member under A.R.S. Title 36, Chapter 29, and these rules.
10. “Contractor” means a person, an organization, or an entity that agrees through a direct contracting relationship with the Administration, to provide goods and services specified by the contract under the requirements of the contract and these rules.
11. “Contractor of record” means an organization or an entity in which a person is enrolled for the provision of AHCCCS services.
12. “Day” means a calendar day unless otherwise specified in the text.
13. “DES” means the Department of Economic Security.
14. “EAC” means eligible assistance children.
15. “ELIC” means eligible low-income children.
16. “Eligible assistance children” means the children defined by A.R.S. § 36-2905.03(B).
17. “Eligible low income children” means the children defined by A.R.S. § 36-2905.03(C) and (D).
18. “Eligible applicant” means the applicant defined in A.R.S. § 36-2901(4).
19. “Enumeration” means the assignment of a specific 9-digit identification number to a person by the Social Security Administration.
20. “Equity” means the county assessor full cash or market value of a resource minus valid liens, encumbrances, or both.
21. “Facility” means a building or portion of a building licensed or certified by the Arizona Department of Health Services as a health care institution, under A.R.S. Title 36, Chapter 4, to provide a medical service, a nursing service, or other health care or health-related services.
22. “Factor” means an organization, a collection agency, a service bureau, or a person who advances money to a provider for accounts receivable that the provider assigns, sells, or otherwise transfers, including transfers through the use of a power of attorney, to the organization, the collection agency, the service bureau, or the person that receives an added fee or a deduction of a portion of the face value of the accounts receivable in return for the advanced money. The term

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- “factor” does not include a business representative, such as a billing agent or an accounting firm described within these rules, or a health care institution.
23. “FBR” means Federal Benefit Rate, defined in R9-22-101(B)(24).
 24. “Federal Benefit Rate” means the maximum monthly Supplemental Security Income payment rate for an eligible person or a married couple.
 25. “Federal emergency services program” means a program designed to provide emergency medical services covered under 42 U.S.C. 1396b(v), to treat an emergency medical condition for a categorically eligible person who is determined eligible under A.R.S. § 36-2903.03.
 26. “FESP” means federal emergency services program.
 27. “FQHC” means federally qualified health center.
 28. “GSA” means a geographical service area designated by the Administration within which a contractor of record provides, directly or through a subcontract, a covered health care service to a member enrolled with that contractor of record.
 29. “Hospital” means a health care institution that is licensed as a hospital by the Arizona Department of Health Services under A.R.S. Title 36, Chapter 4, Article 2, and certified as a provider under Title XVIII of the Social Security Act, as amended, or is currently determined to meet the requirements of certification.
 30. “Indigent” means meeting eligibility criteria under A.R.S. § 11-297.
 31. “Inmate of a public institution” means a person defined by 42 CFR 435.1009.
 32. “License” or “licensure” means a nontransferable authorization that is based on established standards in law, is issued by a state or a county regulatory agency or board, and allows a health care provider to render a health care service lawfully.
 33. “Medical record” means all documents that relate to medical and behavioral health services provided to an eligible person, a physician, or other licensed practitioner of the healing arts or member and that are kept at the site of the provider.
 34. “Medical services” means health care services provided to an eligible person by a physician, a practitioner, a dentist, or by a health professional and technical personnel under the direction of a physician, a practitioner, or a dentist.
 35. “Medically necessary” means a covered service provided by a physician or other licensed practitioner of the healing arts and within the scope of practice under state law to:
 - a. Prevent disease, disability, and other adverse health conditions or their progression; or
 - b. Prolong life.
 36. “Medicare HMO” means a health maintenance organization that has a current contract with the Health Care Financing Administration (HCFA) for participation in the Medicare program under 42 CFR 417(L).
 37. “MI/MN” means medically indigent and medically needy defined in A.R.S. § 36-2901(4)(a) and (c).
 38. “Nursing facility” means a nursing facility defined in 42 U.S.C. 1396r(a).
 39. “Noncontracting provider” means the provider defined in A.R.S. § 36-2931.
 40. “Referral” means the process by which an eligible person is directed by a primary care provider or an attending physician to another appropriate provider or resource for diagnosis or treatment.
 41. “Separate property” means property defined in A.R.S. § 25-213.
 42. “Service location” means any location at which a member obtains any health care service provided by a contractor of record under the terms of a contract.
 43. “Service site” means a location designated by a contractor of record as the location at which a person is to receive health care services.
 44. “SESP” means state emergency services program.
 45. “S.O.B.R.A.” means Section 9401 of the Sixth Omnibus Budget Reconciliation Act, 1986, amended by the Medicare Catastrophic Coverage Act of 1988, 42 U.S.C. 1396a(a)(10)(A)(ii)(IX), July 1, 1988.
 46. “Spouse” means the husband or wife who has entered into a contract of marriage, recognized as valid by Arizona.
 47. “SSA” means Social Security Administration defined in P.L. 103-296, Title I.
 48. “SSI” means Supplemental Security Income under Title XVI of the Social Security Act, as amended.
 49. “SSN” means social security number.
 50. “State alien” means an unqualified alien described in A.R.S. § 36-2903.03(C).
 51. “State emergency services program” means a program designed to provide emergency medical services identified as covered under R9-22-217 to treat an emergency medical condition for a person who is determined eligible under A.R.S. § 36-2905.05.
 52. “Subcontract” means an agreement entered into by a contractor with any of the following:
 - a. A provider of health care services who agrees to furnish covered services to a member;
 - b. A marketing organization; or
 - c. Any other organization or person who agrees to perform any administrative function or service for a contractor specifically related to securing or fulfilling the contractor’s obligation to the Administration under the terms of a contract.

R9-22-112. Behavioral Health Services Related Definitions Repealed

In addition to definitions contained in A.R.S. § 36-2901, the words and phrases in this Chapter have the following meanings unless the context explicitly requires another meaning: “Acute mental health services” means inpatient or outpatient health services provided to treat mental or emotional disorders, as necessary for crisis stabilization, evaluation, and determination of future service needs.

R9-22-112. Behavioral Health Services Related Definitions

In addition to definitions contained in A.R.S. § 36-2901, the words and phrases in this Chapter have the following meanings unless the context explicitly requires another meaning:

1. “ADHS” means the Arizona Department of Health Services which is the state department mandated to serve the public health needs of all Arizona residents.
2. “Behavior management services” as specified in 9 A.A.C. 20.
3. “Behavioral health paraprofessional” as defined in 9 A.A.C. 20, Article 1.
4. “Behavioral health professional” as defined in 9 A.A.C. 20, Article 1.
5. “Behavioral health service” as defined in 9 A.A.C. 20, Article 1.
6. “Behavioral health technician” as defined in 9 A.A.C. 20, Article 1.
7. “Board eligible for psychiatry” means documentation of completion of an accredited psychiatry residency program approved by the American College of Graduate Medical Education, or the American Osteopathic Association. Documentation would include either a certificate of residency training including exact dates, or a letter of verification of residency training from the training director including the exact dates of training.
8. “Case management services” means a set of supportive services and activities that enhance treatment, compliance and effectiveness. This definition shall only be applicable for purposes of 9 A.A.C. 22, Article 12.
9. “Certified psychiatric nurse practitioner” as specified in A.R.S. § 32-1601 and certified under the American Nursing Association’s Statement and Standards for Psychiatric-Mental Health Clinical Nursing Practice as specified in R4-19-505.
10. “Clinical supervision” as specified in 9 A.A.C. 20.
11. “De novo hearing” as defined in 42 CFR 431.202.
12. “Evaluation” means the assessment of a member’s medical, psychological, psychiatric, or social conditions to determine if a behavioral health disorder exists and if so, to establish a treatment plan for all medically necessary services.
13. “IMD” means an Institution for Mental Diseases as described in 42 CFR 435.1009 and licensed by ADHS.
14. “Inpatient psychiatric facilities for individuals under age 21” means a licensed hospital or a psychiatric hospital or a Residential Treatment Center (RTC) licensed as a Level I behavioral health facility by ADHS and accredited by an AHCCCS approved accrediting body as specified in contract and authorized by federal law or regulations. These facilities provide room and board and treatment for behavioral health problems of an individual who is under 21 years of age.
15. “Mental disorder” as defined in A.R.S. § 36-501.
16. “Partial Care”
 - a. “Basic partial care” as specified in 9 A.A.C. 20.
 - b. “Intensive partial care services” as specified in 9 A.A.C. 20.
17. “Psychiatrist” as specified in A.R.S. §§ 32-1401 or 32-1800 and 36-501.
18. “Psychologist” as specified in A.R.S. §§ 32-2061 and 36-501.
19. “Psychosocial rehabilitation” as specified in 9 A.A.C. 20.
20. “RBHA” means the Regional Behavioral Health Authority as defined in 9 A.A.C. 21, Article 1.
21. “Registered nurse” as defined in A.R.S. § 32-1601. In addition, a registered nurse providing a behavioral health service to a member must have a minimum of 1 year of experience in a behavioral health related field as specified in 9 A.A.C. 20, Article 1.
22. “Screening” means a face-to-face interaction with a member to determine the need for behavioral health services and the assignment of a member for further evaluation, diagnosis or care and treatment.
23. “Substance abuse” as defined in 9 A.A.C. 20, Article 1.
24. “Treatment” as defined in 9 A.A.C. 20, Article 1.

ARTICLE 2. SCOPE OF SERVICES

R9-22-204. Inpatient General Hospital Services

- A. Inpatient services provided in a general hospital shall be covered by contractors or provided by fee-for-service providers or noncontracting providers and shall include:
1. Hospital accommodations and appropriate staffing, supplies, equipment, and services for:
 - a. Maternity care;

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- b. Neonatal intensive care (NICU);
 - c. Intensive care (ICU);
 - d. Surgery;
 - e. Nursery;
 - f. Routine care; and
 - g. Behavioral health (psychiatric) care.
 - i. Emergency crisis behavioral health services ~~may shall~~ be provided ~~for not to exceed~~ 3 days per acute episode and a maximum of 12 days per AHCCCS contract year for ~~each member or eligible person unless services are provided under Article 12 a MI/MN, EAC, or ELIC member as defined in 9 A.A.C. 22, Article 1, or a SES or FES person as specified in R9-22-217.~~
 - ii. Emergency behavioral health services for a member eligible according to A.R.S. § 36-2901(4)(b) shall be provided as specified in 9 A.A.C. 22, Article 12.
- ii-iii. For purposes of this Section, the AHCCCS contract year shall be October 1 through September 30.
2. Ancillary services as specified by the Director and included in contract:
- a. Labor, delivery and recovery rooms, and birthing centers;
 - b. Surgery and recovery rooms;
 - c. Laboratory services;
 - d. Radiological and medical imaging services;
 - e. Anesthesiology services;
 - f. Rehabilitation services;
 - g. Pharmaceutical services and prescribed drugs;
 - h. Respiratory therapy;
 - i. Blood and blood derivatives;
 - j. Central supply items, appliances, and equipment not ordinarily furnished to all patients and which are customarily reimbursed as ancillary services;
 - k. Maternity services; and
 - l. Nursery and related services.
- B.** The following limitations apply to general inpatient hospital services that are provided by fee-for-service providers and for which the Administration is financially responsible:
- 1. The cost of inpatient hospital accommodation for an eligible person shall be incorporated into the rate paid for the level of care as specified in subsection (A)(1).
 - 2. Prior authorization shall be obtained from the Administration for the following inpatient hospital services provided to an eligible person:
 - a. Non-emergency and elective admission, including psychiatric hospitalization, shall be authorized prior to the scheduled admission;
 - b. Elective surgery, with the exception of voluntary sterilization procedures, shall be authorized prior to the surgery;
 - c. An emergency hospitalization that exceeds 3 days or an intensive care unit admission that exceeds 1 day;
 - d. Hospitalization beyond the number of days initially authorized shall be covered only if determined medically necessary through AHCCCS Administration concurrent team review; and
 - e. Services or items furnished to cosmetically reconstruct appearance after the onset of trauma or serious injury shall be authorized prior to service delivery; ~~and~~
 - f. ~~Behavioral health services for an eligible person who is 18, 19, or 20 years of age that are provided on an emergency basis for crisis stabilization, and exceed 3 days per episode, or 12 days per contract year.~~

R9-22-210. Emergency Medical and Behavioral Health Services

- A.** Provision of and payment for emergency services. An emergency ~~medical service and a behavioral health emergency or crisis stabilization~~ medical or behavioral health service shall be provided based on the prudent layperson standard to a member or an eligible person by a licensed provider, registered with AHCCCS to provide the services. Emergency services ~~and stabilization services~~ shall be provided ~~for and paid for as specified in 42 CFR 438.114 as of September 29, 1998, which is incorporated by reference and on file with the Administration and the Office of the Secretary of State. This incorporation by reference contains no future editions or amendments.~~ as specified in 42 U.S.C. 1396u-2, as of August 5, 1997, which is incorporated by reference and on file with the Administration and the Office of the Secretary of State. This incorporation by reference contains no future editions or amendments.
- B.** Verification. A provider of emergency services shall verify eligibility and enrollment status through the Administration to determine the need for notification to a contractor for a member, or the Administration for an eligible person, and to determine the party responsible for payment of services rendered.
- C.** Access. Access to an emergency room and emergency medical and behavioral health services shall be available 24 hours-per-day, 7 days-per-week in each contractor's service area. The use of an examining or a treatment room shall be available when required by a physician or a practitioner for the provision of emergency services.

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- D. ~~Consultation. Evaluation. Consultation~~ Evaluation provided by a psychiatrist or a psychologist ~~shall~~ may be covered as an emergency service if required to evaluate or stabilize an acute episode of mental ~~illness~~ disorder or substance abuse. Evaluation for Title XIX members shall be covered as specified in R9-22-1205.
- E. Prior authorization. An emergency service does not require prior authorization ~~but~~ however a provider shall comply with the following notification requirements:
1. A provider, a nonprovider, and a noncontracting provider furnishing emergency services to a member shall notify a member's contractor within 12 hours from the time a member presents for services;
 2. A provider of emergency services for an eligible person is not required to notify the Administration; and
 3. If a member's medical condition is determined not to be an emergency medical condition, as defined in Article 1 of this Chapter, a provider shall notify a member's contractor before initiation of treatment and follow the prior authorization requirements and protocol of a contractor regarding treatment of a member's non-emergent condition. Failure to provide timely notice or comply with prior authorization requirements of a contractor constitutes cause for denial of payment.
- F. Post-stabilization services. After a member's emergent condition has been stabilized, a provider, a nonprovider, and a noncontracting provider shall request authorization from a contractor for post-stabilization services as specified in 42 U.S.C. 1396u-2, as of August 5, 1997, which is incorporated by reference and on file with the Administration and the Office of the Secretary of State. This incorporation by reference contains no future editions or amendments. ~~A contractor shall pay for the post-stabilization services if:~~
- ~~1. The service is prior authorized by a contractor; or~~
 - ~~2. A contractor does not respond to an authorization request within the time frame specified in 42 CFR 438.114, as of September 29, 1998, which is incorporated by reference and on file with the Administration and the Office of the Secretary of State. This incorporation by reference contains no future editions or amendments.~~

R9-22-215. Other Medical Professional Services

- A. The following medical professional services provided to a member by a contractor, or an eligible person through the Administration, shall be covered services when provided in an inpatient, outpatient, or office setting within limitations specified below:
1. Dialysis;
 2. Family planning services including medications, supplies, devices, and surgical procedures provided to delay or prevent pregnancy. Family planning services are limited to:
 - a. Contraceptive counseling, medications, supplies, and associated medical and laboratory examinations, including HIV blood screening as part of a package of sexually transmitted disease tests provided with a family planning service;
 - b. Sterilization; and
 - c. Natural family planning education or referral;
 3. Certified nurse midwife services provided by a certified nurse practitioner in midwifery;
 4. Licensed midwife service for prenatal care and home births in low risk pregnancies;
 5. Podiatry services when ordered by a member's primary care provider or an eligible person's attending physician or practitioner;
 6. Respiratory therapy;
 7. Ambulatory and outpatient surgery facilities services;
 8. Home health services in A.R.S. § 36-2907(D);
 9. Private or special duty nursing services when medically necessary and prior authorized;
 10. Rehabilitation services including physical therapy, occupational therapy, audiology and speech therapy within limitations in this Article;
 11. Total parenteral nutrition services; and
 12. Chemotherapy; and
 - ~~13. Consultation for acute episodes of mental illness or substance abuse provided by a psychiatrist or psychologist regarding evaluation, stabilization, and treatment plan determination, except consultation services provided under Article 12. Services shall be through a referral from a member's primary care provider, or an eligible person's attending physician or practitioner unless the requirement for referral is waived by the Administration.~~
- B. Prior authorization from the Administration for eligible persons is required for services listed in subsections (A)(4) through (11).
- C. The following shall be excluded as AHCCCS covered services:
1. Occupational and speech therapies provided on an outpatient basis for members and eligible persons 21 years of age or older;
 2. Physical therapy provided only as a maintenance regimen;
 3. Abortion counseling; or
 4. Services or items furnished solely for cosmetic purposes.

ARTICLE 7. STANDARDS FOR PAYMENTS

R9-22-705. Payments by Contractors

- A.** Authorization. A contractor shall pay for all admissions and covered services rendered to its members if a covered service or an admission has been arranged by a contractor's agent or an employee, a subcontracting provider, or other individual acting on a contractor's behalf and if necessary authorization has been obtained. A contractor shall not require prior authorization for a medically necessary covered service provided during any prior period for which a contractor is responsible. A contractor is not required to pay a claim for a covered service that is submitted more than 6 months after the date of the service or more than 6 months after the date of eligibility posting, whichever is later, or that is submitted as a clean claim more than 12 months after the date of the service or more than 12 months after the date of eligibility posting, whichever is later.
- B.** Timeliness of provider claim payment.
1. A contractor shall reimburse, or provide written notice for a claim that is denied or reduced by a contractor, to a subcontracting provider for the provision of medically necessary health care services to a contractor's member, within the time period specified by the subcontract.
 2. Unless the subcontract specifies otherwise, a contractor shall pay valid clean claims according to 42 U.S.C. 1396u-2, as of August 5, 1997, which is incorporated by reference and on file with the Administration and the Office of the Secretary of State. This incorporation by reference contains no future editions or amendments and states that:
 - a. 90% of valid clean claims shall be paid within 30 days of the date of receipt of a claim,
 - b. 99% of valid clean claims shall be paid within 90 days of the date of receipt of a claim, and
 - c. The remaining 1% of valid clean claims shall be paid within 12 months of the date of receipt of a claim.
 3. Unless the subcontract specifies otherwise, a contractor shall provide notice of a denial or a reduction of a claim for:
 - a. 90% of the claims within 30 days of the date of receipt of a claim,
 - b. 99% of the claims within 90 days of the date of receipt of a claim, and
 - c. The remaining 1% of the claims within 12 months of the date of receipt of a claim.
 4. A notice of denial or reduction shall include a statement describing the right to grieve the contractor's denial or reduction of a claim according to ~~A.A.C. R9-22, Article 8~~ 9 A.A.C. 22, Article 8.
- C.** Date of Claim. A contractor's date of receipt of an inpatient or an outpatient hospital claim shall be the date the claim is received by a contractor as indicated by the date stamp on the claim, the claim reference number, or the date-specific number system assigned by a contractor. A hospital claim shall be considered paid on the date indicated on the disbursement check. A denied hospital claim shall be considered adjudicated on the date of its denial. A claim that is pending for additional supporting documentation will receive a new date of receipt upon receipt of the additional documentation; however, a claim that is pending for documentation other than the minimum required documentation specified in either A.R.S. §§ 36-2903.01(J) or ~~A.R.S. § 36-2904(K)~~, as applicable, will not receive a new date of receipt. A contractor and a hospital may, through a contract approved as specified in R9-22-715(A), adopt a method for identifying, tracking, and adjudicating a claim that is different from the method described in this subsection.
- D.** Payment for medically necessary outpatient hospital services.
1. A contractor shall reimburse a subcontracting and a noncontracting provider for the provision of outpatient hospital services rendered on or after March 1, 1993, at either a rate specified by a subcontract or, in absence of a subcontract, the AHCCCS hospital-specific outpatient cost-to-charge ratio multiplied by covered charges. Subcontract rates, terms, and conditions are subject to review, and approval or disapproval under A.R.S. § 36-2904(K)(1)(b) and R9-22-715.
 2. A contractor shall pay for all emergency care services rendered to a member by a noncontracting provider or a non-provider when the services:
 - a. Are rendered according to the prudent layperson standard as specified in R9-22-210;
 - b. Conform to the definition of emergency medical ~~and or acute mental~~ behavioral health services in 9 A.A.C. 22, Articles 1 and 12 and conform to the emergency behavioral health emergency services requirements of R9-22-1205(E); and
 - c. Conform to the notification requirements in 9 A.A.C. 22, Article 2.
- E.** Payment for inpatient hospital services. A contractor shall reimburse an out-of-state hospital for the provision of hospital services at negotiated discounted rates, the Arizona average cost-to-charge ratio multiplied by covered charges or, if reasonably and promptly available, the Medicaid rate that is in effect at the time a service is provided in the state in which the hospital is located, whichever is lowest. A contractor shall reimburse an in-state subcontractor and a noncontracting provider for the provision of inpatient hospital services rendered with an admission date on or after March 1, 1993, at either a rate specified by a subcontract or, in absence of a subcontract, the prospective tiered-per-diem amount in A.R.S. § 36-2903.01 and R9-22-712. Subcontract rates, terms, and conditions are subject to review and approval or disapproval under A.R.S. § 36-2904(K)(1)(b) and R9-22-715. This subsection does not apply to a contractor participating in the pilot program described in R9-22-718.

- F.** Payment for inpatient emergency behavioral health services. A contractor shall reimburse for inpatient emergency behavioral health services as specified in R9-22-204 and R9-22-210 for members eligible according to A.R.S. § 36-2901(4)(a), (b), (c), (h) or (j). The payment methodology shall be as specified in R9-22-705 or R9-22-718.
- G.** Payment for observation days. A contractor may reimburse a subcontracting and a noncontracting provider for the provision of observation days at either a rate specified by a subcontract or, in the absence of a subcontract, the AHCCCS hospital-specific outpatient cost-to-charge ratio multiplied by covered charges.
- G.H.** Review of hospital claims.
1. If a contractor and a hospital do not agree on reimbursement levels, terms, and conditions, the reimbursement levels established under A.R.S. § 36-2903.01 and R9-22-712 or R9-22-718 shall apply. In these cases, a hospital shall obtain prior authorization from an appropriate contractor for non-emergency admissions. A contractor shall consider the medical condition of a member, length of stay, and other factors when issuing its prior authorization. A contractor shall not require prior authorization for medically necessary services provided during any prior period for which a contractor is responsible. If a contractor and a hospital agree to a subcontract, the parties shall abide by the terms of the contract regarding utilization control activities. Failure to obtain prior authorization when it is required shall be cause for nonpayment or denial of a claim. A hospital shall cooperate with a contractor's reasonable activities necessary to perform concurrent review and make a hospital's medical records, specific to a member enrolled with a contractor, available for review.
 2. Regardless of prior authorization or concurrent review activities, all hospital claims, including outlier claims, are subject to prepayment medical review and post-payment review by a contractor. Post-payment reviews shall be consistent with A.R.S. § 36-2903.01(O), and an erroneously paid claim is subject to recoupment. If prior authorization was given for a specific level of care, but medical review of a claim indicates that a different level of care was appropriate, a contractor may adjust a claim to reflect the more appropriate level of care. An adjustment in level of care shall be effective on the date when the different level of care was medically appropriate.
 3. A contractor and a hospital may enter into a subcontract that includes hospital claims review criteria and procedures different from those in this subsection if a subcontract binds both parties and meets the requirements of R9-22-715.
- H.I.** Timeliness of hospital claim payment. Payment by a contractor for inpatient hospital admissions and outpatient hospital services on and after March 1, 1993, shall be subject to Laws 1993, 2nd Special Session, Ch. 6, § 29, as amended by Laws 1995, 1st Special Session, Ch. 5, § 8; Laws 1993, 2nd Special Session, Ch. 6, § 27, as amended by Laws 1995, 1st Special Session, Ch. 5, § 6; and A.R.S. § 36-2903.01(J)(6).

ARTICLE 12. BEHAVIORAL HEALTH SERVICES

R9-22-1201. Definitions

The following words and phrases, in addition to definitions contained in A.R.S. Title 36, Chapter 29, and A.A.C. Title 9, Chapter 22, Article 1, have the following meanings unless the context of the Article explicitly requires another meaning:

1. ~~“Administration standards” means the standards established in the Title XIX state plan, federal and state statutes, and Administration rules and policies, and any subsequent amendments.~~
2. ~~“Alternative residential care facilities” means ADHS licensed Level I, II, or III facilities that are Title XIX certified and have 16 or fewer beds.~~
3. ~~“Arizona Department of Health Services (ADHS)” means the state department mandated to serve the public health needs of all Arizona residents.~~
4. ~~“Case manager” means an individual certified as a behavioral health professional or a behavioral health technician, or an individual with a high school diploma or GED and a combination of 3 years of behavioral health education and experience, supervised by a behavioral health professional or a clinical supervisor, who participates in the development of behavioral health treatment services, is responsible for developing the most cost effective, clinically appropriate individual service plan; arranges for service provision; and monitors treatment to ensure that the behavioral health needs of the member or eligible person are met.~~
5. ~~“Clinical supervisor” means an individual who meets the qualifications as defined in Laws 1992, Chapter 310.~~
6. ~~“Individual service plan” means a specific plan of treatment including specific behavioral health services, service units, anticipated time frames, and provider(s) of care for an eligible person or member.~~
7. ~~“Behavioral health professional” means a psychiatrist, psychologist, social worker, counselor, certified nurse practitioner, registered nurse, or physician’s assistant who meets appropriate licensure and/or certification requirements.~~
8. ~~“Behavioral health services” means those Title XIX covered and medically necessary treatment services for behavioral health or substance abuse disorders as set forth in Administration standards.~~
9. ~~“Behavioral health technician” means an individual with a bachelor’s degree in a behavioral health related field; or a bachelor’s degree in any field, plus one year of experience in a behavioral health service delivery; or a high school diploma or GED and a combination of behavioral health education and experience totaling 4 years. Behavioral health technicians shall be supervised by a behavioral health professional or a clinical supervisor.~~

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10. "Certified nurse practitioner" means a registered nurse certified by the Arizona Board of Nursing to A.R.S. Title 32, Chapter 15.
11. "Physician's assistant" means a person who is certified by the Joint Board on the Regulation of Physician's Assistants pursuant to A.R.S. Title 32, Chapter 25. In addition, physician's assistants providing behavioral health services to eligible persons or members must have a minimum of one year of experience in a behavioral health related field.
12. "Psychiatrist" means a psychiatrist who is professionally licensed pursuant to A.R.S. Title 32, Chapter 13 or Chapter 17, Board certified or Board eligible under the standards of the American Board of Psychiatry and Neurology or the Osteopathic Board of Neurology and Psychiatry.
13. "Psychologist" means a person who is licensed by the Arizona Board of Psychologist Examiners pursuant to A.R.S. Title 32, Chapter 19.1.
14. "Referral" means directing, as appropriate, an eligible person or member requiring behavioral health services to a RBHA or contractor for screening, evaluation, and treatment.
15. "Regional Behavioral Health Authority" (or "RHBA") means an organization under contract with ADHS to coordinate the delivery of behavioral health services in a geographically specific service area of the state.
16. "Registered nurse" means a person who is licensed by the Arizona Board of Nursing pursuant to A.R.S. Title 32, Chapter 15. In addition, registered nurses providing behavioral health services to eligible persons or members must have a minimum of one year of experience in a behavioral health related field.
17. "Seriously Mentally Ill" (or "SMI") means adult persons whose emotional or behavioral functioning is so impaired as to interfere with their capacity to remain in the community without supportive treatment or services of a long term or indefinite duration. The mental disability is severe and persistent and may result in a long term limitation of their functional capabilities for primary activities of daily living, interpersonal relationships, homemaking, self care, employment, or recreation. The mental impairment may limit their ability to seek or receive local, state, or federal assistance such as housing, medical and dental care, rehabilitation services, income assistance, and food stamps or protective services. Although persons with primary diagnoses of mental retardation, head injuries, senile dementia, or Alzheimer's Disease frequently have similar problems or limitations, they are not to be included in this definition.
18. "Substance abuse" means the chronic, habitual or compulsive use of any chemical matter which, when introduced into the body, is capable of altering human behavior or mental functioning and, with extended use, may cause psychological or physiological dependence and/or impaired mental, social or educational functioning. Nicotine addiction is not considered substance abuse.
19. "Title XIX" means Title XIX of the Social Security Act, as amended, which is the federal statute authorizing Medicaid.
20. "Treatment" means the range of behavioral health care received by an eligible person or member that is consistent with the therapeutic goals outlined in the individual service plan.
21. "Tribal government" means the recognized governing body of any federally recognized tribe in Arizona. A tribal government may be any legally established organization of American Indians which is controlled, sanctioned or chartered by the above governing body, or which is democratically elected by the adult members of the American Indian community to be served by such an organization.

R9-22-1202. Eligibility

All categorically eligible persons and members with a behavioral or substance abuse disorder shall be eligible for covered services set forth in R9-22-1204.

R9-22-1203. Service Delivery System and Referral

- A.** The Arizona Department of Health Services (ADHS) shall be responsible, pursuant to A.R.S. § 36-2907, for the provision of medically necessary behavioral health services set forth under this Article to categorically eligible persons and members under 18 years of age, SMI adults 18 years of age and older, and non-SMI adults 21 years of age or older.
 1. ADHS shall contract with RBHAs for the provision of behavioral health services set forth in R9-22-1204 to eligible persons and members.
 2. RBHAs shall arrange for the availability of covered behavioral health services through contracts with qualified services providers within and, if unavailable, outside their service areas.
- B.** ADHS may contract with federally recognized tribal governments for the provision of behavioral health services to eligible persons and members. In the absence of such contracts, eligible persons or members who are enrolled in the Indian Health Service (IHS) may receive on reservation behavioral health services through the IHS or the eligible person or member may be referred off reservation to the RBHA which is responsible for the provision of covered behavioral health services off reservation.
- C.** Contracts shall be responsible for:
 1. The provision of covered behavioral health services to non-SMI categorically eligible persons and members 18 through 20 years of age; and

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2. The referral of members under 18 years of age, SMI adults 18 years of age and older, and non-SMI adults 21 years of age and older to RBHAs in accordance with standards established by the Director.

~~D.~~ The Administration shall provide appropriate authorizations and services for 18 through 20 year old, non-SMI eligible persons not enrolled with a contractor.

~~**R9 22 1204. Covered Behavioral Health Services for Eligible Persons and Members**~~

~~A.~~ The following general service requirements apply with respect to behavioral health services provided under this Article, subject to all applicable exclusions and limitations.

- ~~1. The service shall be medically necessary, cost effective and Title XIX reimbursable.~~
- ~~2. The service shall be provided by qualified service providers pursuant to R9 22 1205.~~
- ~~3. Service providers, as applicable, shall contract with the RBHAs or contractors.~~
- ~~4. Services shall be authorized, as applicable, by the RBHA or contractor and shall be consistent with prior authorization, federal certification of need and inspection of care requirements and utilization review standards established by the Director.~~
- ~~5. The person shall be eligible for Title XIX on the date the service is provided and shall not be in an institution for mental diseases (IMD) unless the eligible person or member is under 21 years of age and in a Title XIX participating inpatient psychiatric facility, or 65 years of age or older and in a Title XIX participating IMD.~~
- ~~6. Services shall be provided in appropriate residential settings which meet state and federal licensing standards.~~

~~B.~~ The following behavioral health services shall be covered, subject to the limitations and exclusions in this Article, and further subject to approval by the Health Care Financing Administration:

- ~~1. Inpatient services, including:~~
 - ~~a. Inpatient hospital services for treatment of acute episodes, generally of a short duration, in participating acute general hospitals.~~
 - ~~b. Inpatient psychiatric facility services under the direction of a psychiatrist for persons under 21 years of age in a residential treatment center (RTC) or an inpatient psychiatric hospital accredited by the Joint Commission on Accreditation of Health Care Organizations (JCAHO).~~
 - ~~c. IMD services under the direction of a psychiatrist for persons 65 years of age or older in an inpatient psychiatric hospital or nursing care facility providing diagnosis, medical attention, nursing care and related services to persons with mental disease.~~
 - ~~d. Limitations:~~
 - ~~i. Room and board is not a covered service in residential settings except for inpatient services as set forth in subsection (B)(1).~~
 - ~~ii. Inpatient substance abuse services initially may be authorized for up to 4 days of medically necessary detoxification. If medically necessary, additional days subsequently may be authorized if ordered by a physician and approved by the RBHA, the contractor's Medical Director, or the Administration.~~
- ~~2. Professional services, including:~~
 - ~~a. Individual therapy and counseling provided by a behavioral health professional or a behavioral health technician in face-to-face interaction with the eligible person or member.~~
 - ~~b. Group and/or family therapy/counseling provided by a behavioral health professional or a behavioral health technician in face-to-face interaction with the eligible person or member and his/her family, and/or spouse, or other group.~~
 - ~~c. Psychotropic medication adjustment and monitoring which includes prescriptions, review of the effects and side effects of psychotropic medications, and adjustment of the type and dosage of medication provided by a psychiatrist; or a physician's assistant, certified nurse practitioner, or registered nurse under the direction of a physician.~~
 - ~~d. Limitations: Only psychiatrists and psychologists may bill independently for services provided. Other behavioral health professionals and behavioral health technicians shall be affiliated with a qualified agency such as a rehabilitation or clinic agency or an inpatient or outpatient hospital, RTC, or an alternative residential care facility and services provided by these individuals shall be billed through that agency.~~
- ~~3. Rehabilitation services, including:~~
 - ~~a. Basic partial care services which are provided by a behavioral health professional or a behavioral health technician following residential or inpatient treatment, or to prevent placement in a more restrictive setting. Basic partial care services are provided within a structured, coordinated, and continuous program of goal-oriented therapeutic activities.~~
 - ~~b. Intensive partial care services which are provided by a behavioral health professional or a behavioral health technician as an alternative to inpatient care. Intensive partial care services are a planned, structured, and coordinated program of intensive care, which are scheduled on a regular basis, providing active treatment for full or partial resolution of the eligible person's or member's acute or episodic behavioral health problems and includes on-site visits with a psychiatrist.~~

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- e. Emergency/crisis behavioral health services provided by a behavioral health professional or a behavioral health technician. Emergency/crisis behavioral health services are immediate and intensive, time-limited, community-based, face-to-face crisis interventions and resolution services which are available on a 24-hour basis in situations where an eligible person or member is a danger to self or others.
 - d. Behavior management services provided by a behavioral health professional or a behavioral health technician. Behavior management services primarily involve direct patient behavior management and may also include services related to activities of daily living and household services incidental to and consistent with the behavioral health rehabilitation needs of the eligible person or member.
 - e. Psychosocial rehabilitation services provided by a behavioral health professional or a behavioral health technician. Psychosocial rehabilitation services are a comprehensive program of active treatment, including activities of daily living, training in communication, and assistance with psychotropic medication.
 - f. Limitations:
 - i. Intensive partial care services shall be limited to eligible persons or members whose emotional, behavioral, or substance abuse problems indicate a serious emotional disturbance and/or evidence of abuse or neglect.
 - ii. Prevocational or vocational activities and school attendance educational hours are not included in intensive and basic partial care services and may not be billed simultaneously with these services.
 - iii. Emergency/crisis behavioral health services are limited to emergencies or crises as defined in R9-22-101.
4. Evaluation and case management services, including:
- a. Screening provided by a behavioral health professional or a behavioral health technician. Screening is an in-person interaction with the eligible person or member to determine the need for behavioral health services and the assignment of the eligible person or member for further evaluation, diagnosis, or care and treatment.
 - b. Evaluation services provided by a behavioral health professional or a behavioral health technician. Evaluation is the assessment of the eligible person's or member's medical, psychiatric, psychological, or social conditions to determine if a mental disorder exists and, if so, to provide diagnosis for the direction of care.
 - c. Case management services. Case management consists of a set of services and activities through which appropriate and cost-effective Title XIX covered services are identified, planned, coordinated, obtained, monitored, and continuously evaluated.
 - d. Limitations:
 - i. Screening services are limited to no more than once for every 6-month period of continuous behavioral health services.
 - ii. Reimbursement for evaluation services and non-emergency medication monitoring provided to SMI-eligible persons or members is included in the clinical case management per diem rate and must not be billed separately. An SMI clinical case management team member must not bill independently for the delivery of behavioral health services.
 - iii. SMI clinical case management services shall only be provided by a RBHA to SMI-eligible persons or members.
5. Behavioral health-related services, including:
- a. Psychotropic medications defined by the ADHS Title XIX formulary or contractor formulary, as appropriate.
 - b. Laboratory and radiology services provided by medical laboratories and outpatient hospitals, which are used to regulate and monitor psychotropic medications and to diagnose mental illnesses.
6. Transportation services which include emergency and medically necessary transportation to and from settings providing behavioral health services. Limitations:
- a. Medically necessary transportation must be prior authorized as applicable by the RBHA or contractor.
 - b. Emergency and medically necessary transportation services must be provided in accordance with R9-22-211.
 - c. Emergency transportation is limited to situations where there is an imminent threat of harm to the eligible person or member if care is not rendered expeditiously.

R9-22-1205. Qualifications and Standards of Participation for Service Providers

- A.** To provide behavioral health services to eligible persons or members, qualified service providers shall, at a minimum:
 - 1. Be employed by or contracted in writing with either a RBHA or a contractor to provide behavioral health services to eligible persons or members.
 - 2. Have all applicable state licenses or certifications or comply with alternative requirements established by the Administration;
 - 3. Register with the Administration as a service provider;
 - 4. Comply with all applicable criteria under A.A.C. Title 9, Chapter 22, Article 5, and this Article.
- B.** Utilization control:
 - 1. Service providers shall cooperate with utilization review and quality management programs of the RBHA, contractors, the ADHS and the Administration.

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2. Service providers shall comply with applicable procedures set forth in 42 CFR 456, incorporated by reference herein and on file with the Office of the Secretary of State.

~~R9-22-1206. Payments~~

- ~~A. All payments to ADHS and contractors shall be made pursuant to the terms and conditions of agreements executed with the Administration in accordance with requirements set forth in A.A.C. Title 9, Chapter 22, Article 7, unless otherwise specified in this Article.~~
- ~~B. ADHS shall receive a monthly capitation payment, based on the number of acute care categorically eligible persons and members at the beginning of each month, in accordance with standards established by the Administration. Administrative costs shall be incorporated into the capitation payment.~~
- ~~C. Contractors shall be paid for behavioral health services provided to enrolled non-SMI members 18 through 20 years of age through a capitation adjustment in their contract with the Administration.~~
- ~~D. Claims submissions~~
 1. ~~Contracted service providers shall submit clean claims to ADHS or its designated representative, as specified in the ADHS contract with the Administration.~~
 2. ~~Payments for fee-for-service claims for non-SMI eligible persons 18 through 20 years of age submitted to the Administration shall be limited to amounts that do not exceed the capped fee schedule adopted by the Administration, adjusted for third party payments. The fee schedule is on file at the central office of the Administration.~~
 3. ~~Claims submitted to contractors and the Administration for non-SMI members or eligible persons 18 through 20 years of age shall comply with the time frames and other applicable procedures set forth in Article 7.~~

~~R9-22-1207. Grievance and Appeal Process~~

- ~~A. All grievances relating to any adverse action, decision, or policy regarding behavioral health issues shall be processed in accordance with standards by the Administration pursuant to contract with the ADHS, contractors, and provider agreements.~~
- ~~B. An appeal of a grievance decision under this Article shall be conducted as a contested case pursuant to A.A.C. Title 9, Chapter 22, Article 8 and the Arizona Administrative Procedure Act (A.R.S. Title 41, Chapter 6, Article 6).~~

R9-22-1201. General Requirements

General requirements. The following general requirements apply to behavioral health services provided in this Article, subject to all exclusions and limitations.

- A. Administration. The program shall be administered as specified in A.R.S. § 36-2903.
- B. Provision of services. Behavioral health services shall be provided in compliance with A.R.S. § 36-2907 and this Chapter.
- C. Operational authority. The Director has full operational authority to adopt rules as specified in A.R.S. § 36-2903.
- D. Laws and regulations. Services shall be rendered according to state and federal laws and regulations, the Arizona Administrative Code and the Administration's contractual requirements.
- E. Definitions. For purposes of this Article, the following definitions apply:
 1. "Alternative Residential Care Facility" means an ADHS-licensed facility with 16 or fewer beds. Alternative residential care facilities include licensed Level II and III facilities as well as Level I facilities licensed to provide emergency services, detoxification services, or both.
 2. "Emergency/crisis behavioral health services" as specified in 9 A.A.C. 20.
 3. "Health plan" means a plan who contracts directly with AHCCCS to provide services specified by the contract under the requirements of the contract and these rules.
 4. "Physician assistant" as specified in A.R.S. § 32-2501. In addition, a physician assistant providing a behavioral health service shall work under the supervision of an AHCCCS registered psychiatrist.
 5. "TRBHA" means the Tribal Regional Behavioral Health Authority. Tribal governments, through an IGA with ADHS may operate a Tribal Regional Behavioral Health Authority for the provision of behavioral health services to a Native American member.

R9-22-1202. ADHS and Health Plan Responsibilities

- A. ADHS responsibilities. Behavioral health services shall be provided through a contract with ADHS.
 1. ADHS shall:
 - a. Be responsible as specified in A.R.S. § 36-2907, for the provision of behavioral health services in this Article for all members.
 - b. Contract with a RBHA for the provision of behavioral health services in R9-22- 1205 for a member. A RBHA shall provide services directly or through contracts with qualified service providers as specified in R9-22-1206 within and, if the service is unavailable, outside a RBHA's service area.
 - c. Use its diagnostic and evaluation program for referral of a child, for an eligibility determination, who is not already enrolled with AHCCCS or KidsCare under A.R.S. §§ 36-2901(4)(b), 36-2931, or 36-2981 and who may be in need of behavioral health services.

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- d. Ensure that a member's behavioral health services are provided in collaboration with a member's primary care provider.
 - e. Coordinate the transition of care and medical records, as specified in A.R.S. §§ 36-2903, 36-509, R9-22-512 and in contract, when a member transitions from:
 - i. A behavioral health provider to another behavioral health provider.
 - ii. A RBHA to another RBHA.
 - iii. A RBHA to a health plan.
 - iv. A health plan to a RBHA, or
 - v. A health plan to another health plan.
 - 2. ADHS may contract with a TRBHA for the provision of behavioral health services for a Native American member. In the absence of a contract, a Native American member may:
 - a. Elect to receive behavioral health services from an IHS facility or a TRBHA, or
 - b. Be referred off-reservation to a RBHA for the provision of covered behavioral health services.
- B. Health plan responsibilities. A health plan shall:**
- 1. Refer a member to a RBHA as specified in contract;
 - 2. Provide EPSDT developmental and behavioral health screens as specified in R9-22-213;
 - 3. Provide inpatient emergency services as specified in R9-22-1205 for a member not yet enrolled with a RBHA;
 - 4. Provide psychotropic medication services for a member, in consultation with the RBHA as needed, for behavioral health conditions that are within the primary care provider's scope of practice; and
 - 5. Coordinate the transition of care and medical records.

R9-22-1203. Eligibility for Covered Services

- A. Title XIX members. A member determined eligible according to A.R.S. § 36-2901(4)(b) shall receive the medically necessary covered services specified in R9-22-1205.**
- B. FES members. A person who would be eligible under A.R.S. § 36-2901(4)(b) except for the failure to meet the U.S. citizenship or alien status requirements prescribed in A.R.S. § 36-2903.03 is eligible for emergency services only.**
- C. State funded members. A member determined eligible according to A.R.S. §§ 36-2901(4)(a), (c), (h), or (j), 36-2905.03 and 36-2905.05 shall receive only emergency services, as specified in R9-22-204(A) which shall be provided through a health plan or an AHCCCS registered FFS provider.**
- D. Ineligibility. A person is not eligible for behavioral health services if a person is:**
 - 1. An inmate of a public institution as defined in 42 CFR 435.1009.
 - 2. A resident of an institution for the treatment of tuberculosis, or
 - 3. Age 21 through 64 and a resident of an IMD.

R9-22-1204. General Service Requirements

- A. Services. Behavioral health services include both mental health and substance abuse services.**
- B. Medical necessity. A service shall be medically necessary as specified in R9-22-201.**
- C. Requirements. A service shall be consistent with R9-22-201 and R9-22-522.**
- D. Prior authorization. A service shall be provided consistent with the prior authorization requirements established by the Director and specified in R9-22-210 and R9-22-1205.**
- E. EPSDT. For Title XIX members under age 21, EPSDT services shall include all medically necessary Title XIX covered services which are necessary to treat a behavioral health problem.**
- F. Experimental services. An experimental service as determined by the Director, or a service provided primarily for the purpose of research, shall not be covered.**
- G. Gratuities. A service or an item, if furnished gratuitously, is not covered and payment shall be denied.**
- H. Service area. Behavioral health services rendered to a member shall be provided within a member's service area except when:**
 - 1. A primary care provider refers a member out of a health plan's area for medical specialty care,
 - 2. A covered service that is medically necessary for a member is not available within the service area,
 - 3. A net savings in behavioral health service delivery costs can be documented without requiring undue travel time or hardship for a member or a member's family, or
 - 4. A service is otherwise authorized based on practice patterns and cost or scope of service considerations.
- I. Travel. When a member is traveling or temporarily residing out of a service area, covered services are restricted to emergency care, unless otherwise authorized by a member's RBHA.**
- J. Non-covered services. If a member requests the provision of a behavioral health service that is not covered by AHCCCS or is not authorized by a RBHA the service may be rendered to a member by an AHCCCS registered behavioral health service provider under the following conditions:**
 - 1. A document that lists the requested services and the itemized cost of each is prepared and provided to a member or a guardian; and

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2. The signature of the member, or the member's guardian, is obtained in advance of service provision indicating that the services have been explained to the member or guardian and that the member or guardian accepts responsibility for payment.
- K.** Referral. If a member is referred out of a RBHA's service area to receive an authorized medically necessary behavioral health service for an extended period of time, all other behavioral health or medically necessary covered services for a member shall also be provided by a health plan or a RBHA during that time.
- L.** Restrictions and limitations. The restrictions, limitations, and exclusions in this Article shall not apply to a health plan or a RBHA when electing to provide a non-covered service.
 1. The costs associated with providing any non-covered service to a member shall not be included in development or negotiation of capitation.
 2. Non-covered services shall be paid from administrative revenue or other funds, unrelated to Title XIX services.
- M.** Residential settings. Partial care, outpatient, emergency services and other behavioral health services may be covered when provided in this setting by providers who are licensed and qualified to do so. Room and board is not a covered service unless provided in an inpatient facility specified in R9-22-1205(B).

R9-22-1205. Scope of Behavioral Health Services

- A.** Covered services. The following behavioral health services shall be covered, subject to the limitations and exclusions in this Article.
- B.** Inpatient behavioral health services.
 1. Inpatient care shall include all behavioral health services, medical detoxification, accommodations and staffing, supplies and equipment. Services shall be provided under the direction of a physician in:
 - a. A general acute care hospital;
 - b. An inpatient psychiatric facility for a person under 21 years of age, licensed as a psychiatric hospital or a residential treatment center licensed as a Level I Psychiatric Facility and accredited by an AHCCCS approved accrediting body as specified in contract and authorized by federal laws and regulations; or
 - c. An IMD for a member under age 21 or 65 years of age and older, licensed as a psychiatric hospital or a NF.
 2. Inpatient service limitations:
 - a. Inpatient services, other than emergency services specified in this Section, shall be prior authorized.
 - b. Services shall be reimbursed on a per diem basis and shall be inclusive of all services except, the following practitioners may bill independently for services:
 - i. A psychiatrist,
 - ii. A certified psychiatric nurse practitioner,
 - iii. A physician assistant as defined in this Article, or
 - iv. A psychologist.
 - c. The following services may be billed independently when prescribed for a member residing in a residential treatment center as specified in R9-22-1205(B)(1)(b):
 - i. Laboratory,
 - ii. Radiology, and
 - iii. Psychotropic medications.
 - d. A member age 21 through 64 is not eligible for services provided in an IMD.
- C.** Partial care.
 1. Partial care shall be provided as either a basic or intensive level of care to meet a member's need for behavioral health treatment and prevent placement in a higher level of care or more restrictive environment.
 - a. Basic partial care services shall be provided by a behavioral health professional or a behavioral health technician under the direction of a psychiatrist, a psychologist, a certified psychiatric nurse practitioner or a physician assistant to prevent the need for a more structured environment.
 - b. Intensive partial care services shall be provided by a behavioral health professional or a behavioral health technician under the direction of a psychiatrist, a psychologist, a certified psychiatric nurse practitioner or a physician assistant as an alternative to inpatient care.
 2. Partial care service limitations and exclusions:
 - a. All services shall be included in the partial care reimbursement rate except, the following practitioners may bill independently:
 - i. A psychiatrist,
 - ii. A certified psychiatric nurse practitioner,
 - iii. A physician assistant as defined in this Article, and
 - iv. A psychologist.
 - b. Vocational activities, school attendance and educational hours shall not be included as a basic or intensive partial care service and shall not be billed simultaneously with these services.
- D.** Outpatient services.

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1. Outpatient services shall include the following:
 - a. Screening provided by a behavioral health professional or a behavioral health technician;
 - b. Evaluation provided by a behavioral health professional;
 - c. Counseling including individual therapy, group and family therapy provided by a behavioral health professional, or a behavioral health technician under the clinical supervision of a behavioral health professional;
 - d. Behavioral management provided by a behavioral health professional, a behavioral health technician or a behavioral health paraprofessional; and
 - e. Psychosocial rehabilitation provided by a behavioral health professional, a behavioral health technician or a behavioral health paraprofessional.
 2. Outpatient service limitations:
 - a. The following practitioners may bill independently:
 - i. A psychiatrist,
 - ii. A certified psychiatric nurse practitioner,
 - iii. A physician assistant as defined in this Article, and
 - iv. A psychologist.
 - b. Other behavioral health professionals, behavioral health technicians and behavioral health paraprofessionals shall be affiliated with, and services billed through, an AHCCCS registered behavioral health agency.
- E. Behavioral health emergency services.**
1. A RBHA shall ensure that behavioral health emergency services are provided by qualified personnel as specified in R9-22-1206 and are available 24 hours-per-day, 7 days-per-week in the RBHA service area in emergency situations where a member is a danger to self or others or is otherwise determined to be in need of immediate unscheduled behavioral health services. Behavioral health emergency services may be provided on either an inpatient or outpatient basis.
 2. A health plan shall provide behavioral health emergency services on an inpatient basis not to exceed 3 days per emergency episode and 12 days per contract year, for a member not yet enrolled with a RBHA.
 3. A provider of inpatient emergency services shall verify the eligibility and enrollment status for a member through the Administration to determine the need for notification to a health plan or a RBHA and to determine the party responsible for payment of services as specified in 9 A.A.C. 22, Article 7.
 4. Behavioral health emergency service limitations:
 - a. An emergency behavioral health service does not require prior authorization but a provider must comply with the notification requirements as specified in R9-22-210.
 - b. A service for an unrelated condition, requiring additional diagnostic and treatment procedures, requires additional prior authorization from a RBHA.
- F. Other behavioral health services. Other behavioral health services shall include:**
1. Case management to support and enhance treatment compliance and effectiveness;
 2. Laboratory and radiology services for behavioral health diagnosis and medication management;
 3. Psychotropic medications and related medications included in a health plan or a RBHA's formulary; and
 4. Medication monitoring, administration and adjustment for psychotropic medications and related medications.
- G. Transportation services.**
1. Emergency transportation shall be covered for a behavioral health emergency as specified in R9-22-211. Emergency transportation shall be limited to behavioral health emergency situations specified in R9-22-1205(E).
 2. Non-emergency transportation shall be covered to and from settings providing covered behavioral health services.
- R9-22-1206. General Provisions and Standards for Service Providers**
- A. Qualified service provider standards. A qualified behavioral health service provider shall, at a minimum:**
1. Be employed by, or contracted in writing with, either a RBHA or a health plan to provide behavioral health services to a member;
 2. Have all applicable state licenses or certifications, or comply with alternative requirements established by the Administration;
 3. Register with the Administration as a service provider; and
 4. Comply with all applicable criteria under 9 A.A.C. 22, Article 5, and this Article.
- B. Quality and Utilization management.**
1. Service providers shall cooperate with quality and utilization management programs of a RBHA, a health plan, ADHS and the Administration as specified in R9-22-522 and contract.
 2. Service providers shall comply with applicable procedures as specified in 42 CFR 456 as of August 23, 1996, which is incorporated by reference and on file with the Administration and the Office of the Secretary of State. This incorporation by reference contains no future editions or amendments.

R9-22-1207. Standards for Payments

- A.** Payment to ADHS. ADHS shall receive a monthly capitation payment, based on the number of acute care members at the beginning of each month, according to standards established by the Administration. Administrative costs shall be incorporated into the capitation payment.
- B.** Claims submissions. Claims submissions include:
1. A contracted service provider shall submit a clean claim to ADHS or its designated representative, as specified in the ADHS contract with the Administration.
 2. A claim for an emergency service for a member not yet enrolled with a RBHA shall be submitted to a health plan and shall comply with the time-frames and other applicable procedures in 9 A.A.C. 22, Article 7.
- C.** Prior authorization. Payment for services or items requiring prior authorization may be denied if prior authorization was not obtained as specified in R9-22-210.

R9-22-1208. Grievance and Appeal Process

- A.** Processing of a grievance. All grievances relating to any adverse action, decision, or policy regarding behavioral health issues shall be processed according to A.R.S. §§ 36-2903.01, 41-1092.02 and 9 A.A.C. 22, Article 8 and 9 A.A.C. 22, Article 13.
- B.** Member appeal. A member's appeal of a grievance decision under this Article shall be conducted as a contested case as specified in 9 A.A.C. 22, Article 8.
- C.** Other appeals. An appeal of a DHS director's decision following an Office of Administrative Hearing decision other than de novo hearing requests by a member shall be limited to an appellate review by the Administration to determine whether substantial evidence in the record supports the decision.

NOTICE OF PROPOSED RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 28. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM (AHCCCS)

ARIZONA LONG-TERM CARE SYSTEM

PREAMBLE

- | <u>1. Sections Affected</u> | <u>Rulemaking Action</u> |
|------------------------------------|---------------------------------|
| R9-28-101 | Amend |
| R9-28-111 | Amend |
| R9-28-1101 | Repeal |
| R9-28-1101 | New Section |
| R9-28-1102 | Repeal |
| R9-28-1102 | New Section |
| R9-28-1103 | Repeal |
| R9-28-1103 | New Section |
| R9-28-1104 | Repeal |
| R9-28-1104 | New Section |
| R9-28-1105 | Repeal |
| R9-28-1105 | New Section |
| R9-28-1106 | Repeal |
| R9-28-1106 | New Section |
| R9-28-1107 | New Section |
| R9-28-1108 | New Section |
- 2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**
- Authorizing statute: A.R.S. § 36-2932(M)
Implementing statute: A.R.S. § 36-2939(2)
- 3. A list of all previous notices appearing in the Register addressing the proposed rule:**
- Notice of Rulemaking Docket Opening: 5 A.A.R. 462, February 5, 1999.
- 4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
- Name: Cheri Tomlinson, Federal and State Policy Administrator

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Address: AHCCCS Administration, Office of Policy Analysis and Coordination
801 East Jefferson Street, Mail Drop 4200
Phoenix, AZ 85034

Telephone: (602) 417-4198

Fax: (602) 256-6756

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

Two Articles in 9 A.A.C. 28 have been opened for the following reasons:

- To make the language conform with current agency practice regarding behavioral health services;
- To make the language comply with the Secretary of State's requirements; and
- To make the language more clear, concise and understandable.

6. A reference to any study that the agency proposes to rely on in its evaluation of or justification for the proposed rule and where the public may obtain or review the study, all data underlying each study, any analysis of the study and other supporting material:

Not applicable.

7. 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.

8. The preliminary summary of the economic, small business, and consumer impact:

The AHCCCS Administration, the Arizona Department of Health Services (ADHS) and each Regional Behavioral Health Authority will be impacted by the change in state law that states the Office of Administrative Hearings (OAH) shall be responsible for conducting evidentiary hearings involving the AHCCCS program effective July 1, 1999. The AHCCCS Administration will be nominally impacted because the Administration will need to educate ADHS with regard to the changes in the evidentiary hearing process. ADHS will be minimally impacted because ADHS will have to educate the RBHAs regarding the change in the process in addition to monitoring that the change took place. The RBHAs will be minimally impacted because each RBHA will need to implement changes in their current process to be in compliance with state law as well as update policies and procedures and member information that relate to the grievance and appeals process.

9. 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: Cheri Tomlinson, Federal and State Policy Administrator

Address: AHCCCS Administration, Office of Policy Analysis and Coordination
801 East Jefferson Street, Mail Drop 4200
Phoenix, AZ 85034

Telephone: (602) 417-4198

Fax: (602) 256-6756

10. The time, place, and nature of the proceedings for the making, 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:

Date: September 29, 1999

Time: 1 p.m.

Location: Arizona Department of Health Services/Behavioral Health Services
2122 East Highland, Suite 100
Phoenix, AZ 85016
Fir Conference Room

Location: Community Partnership of Southern Arizona
4575 East Broadway Road
Tucson, AZ 85711
Pima Conference Room

Location: Northern Arizona Regional Behavioral Health Authority
125 East Elm Street
Flagstaff, AZ 86001

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Downstairs/Main Conference Room

Nature: Teleconference oral proceeding

Written comments shall be submitted not later than 5 p.m., September 29, 1999, to the following person:

Name: Cheri Tomlinson, Federal and State Policy Administrator

Address: AHCCCS Administration, Office of Policy Analysis and Coordination
801 East Jefferson Street, Mail Drop 4200
Phoenix, AZ 85034

Telephone: (602) 417-4198

Fax: (602) 256-6756

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:

42 CFR 456 as of August 23, 1996, incorporated in R9-28-1106.

13. The full text of the rules follows:

TITLE 9. HEALTH SERVICES

**CHAPTER 28. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM (AHCCCS)
ARIZONA LONG-TERM CARE SYSTEM**

ARTICLE 1. DEFINITIONS

Sections

R9-28-101. General Definitions

R9-28-111. Behavioral Health Services Related Definitions

ARTICLE 11. BEHAVIORAL HEALTH SERVICES

Sections

~~R9-28-1101. Definitions Repealed~~

~~R9-28-1101. General Requirements~~

~~R9-28-1102. Eligibility Repealed~~

~~R9-28-1102. Contractor Responsibilities~~

~~R9-28-1103. Service Delivery System Repealed~~

~~R9-28-1103. Eligibility for Covered Services~~

~~R9-28-1104. ALTCs covered Behavioral Health Services Repealed~~

~~R9-28-1104. General Service Requirements~~

~~R9-28-1105. Qualifications and Standards of Participation for Service Providers Repealed~~

~~R9-28-1105. Scope of Behavioral Health Services~~

~~R9-28-1106. Payments Repealed~~

~~R9-28-1106. General Provisions and Standards for Service Providers~~

~~R9-28-1107. Standards for Payments~~

~~R9-28-1108. Grievance and Appeal Process~~

ARTICLE 1. DEFINITIONS

R9-28-101. General Definitions

A. Location of definitions. Definitions applicable to this Chapter are found in the following:

<i>Definition</i>	<i>Section or Citation</i>
1. "211"	R9-28-104
2. "217"	R9-28-104
3. "236"	R9-28-104
4. "Administration"	A.R.S. § 36-2931
<u>5. "ADHS"</u>	<u>R9-28-111</u>
5-6. "AFDC"	R9-22-101

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6-7. “Aggregate”	R9-22-107
7-8. “AHCCCS”	R9-22-101
8-9. “AHCCCS hearing officer”	R9-22-108
9-10. “ALTCS”	A.R.S. § 36-2932
10-11. “ALTCS acute care services”	R9-28-104
11-12. “Alternative HCBS setting”	R9-28-101
12-13. “Ambulance”	R9-22-102
13-14. “Appeal”	R9-22-108
14-15. “Bed hold”	R9-28-102
15-16. “Behavior intervention”	R9-28-102
<u>17.</u> “Behavior management services”	<u>R9-28-111</u>
<u>18.</u> “Behavioral health paraprofessional”	<u>R9-28-111</u>
<u>19.</u> “Behavioral health professional”	<u>R9-28-111</u>
<u>20.</u> “Behavioral health service”	<u>R9-28-111</u>
<u>21.</u> “Behavioral health technician”	<u>R9-28-111</u>
16-22. “Billed charges”	R9-22-107
<u>23.</u> “Board eligible for psychiatry”	<u>R9-28-111</u>
17-24. “Capped fee-for-service”	R9-22-101
18-25. “Case management plan”	R9-28-101
<u>26.</u> “Case management services”	<u>R9-28-111</u>
19-27. “Case manager”	R9-28-101
20-28. “Case record”	R9-22-101
21-29. “Categorically eligible”	A.R.S. § 36-2934
22-30. “Certification”	R9-28-105
<u>31.</u> “Certified psychiatric nurse practitioner”	<u>R9-28-111</u>
23-32. “CFR”	R9-28-101
24-33. “Clean claim”	A.R.S. § 36-2904
<u>34.</u> “Clinical supervision”	<u>R9-28-111</u>
25-35. “Community Spouse”	R9-28-104
26-36. “Community Spouse Resource Deduction”	R9-28-104
27-37. “Comprehensive plan for delivery of services”	R9-28-105
28-38. “Contract”	R9-22-101
29-39. “Contractor”	R9-22-101
30-40. “County of fiscal responsibility”	R9-28-107
31-41. “Covered services”	R9-22-102
32-42. “CPT”	R9-22-107
33-43. “CSRD”	R9-28-104
34-44. “Day”	R9-22-101
<u>45.</u> “De novo hearing”	<u>R9-28-111</u>
35-46. “Developmental disability”	A.R.S. § 36-551
36-47. “Diagnostic services”	R9-22-102
37-48. “Disenrollment”	R9-22-117
38-49. “DME”	R9-22-102
39-50. “Eligible person”	A.R.S. § 36-2931
40-51. “Emergency medical services”	R9-22-102
41-52. “Encounter”	R9-22-107
42-53. “Enrollment”	R9-22-117
43-54. “Estate”	A.R.S. § 14-1201
<u>55.</u> “Evaluation”	<u>R9-28-111</u>
44-56. “Facility”	R9-22-101
45-57. “Factor”	R9-22-101
46-58. “Fair consideration”	R9-28-104
47-59. “FBR”	R9-22-101
48-60. “Grievance”	R9-22-108
49-61. “Guardian”	R9-22-116
50-62. “HCBS”	A.R.S. §§ 36-2931 and 36-2939
51-63. “Home”	R9-28-101
52-64. “Home health services”	R9-22-102
53-65. “Hospital”	R9-22-101

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<u>54-66.</u> “ICF-MR”	R9-28-101
<u>55-67.</u> “IHS”	R9-28-101
<u>56-68.</u> “IMD”	42 CFR 435.1009
<u>69.</u> <u>“Inpatient psychiatric facilities for individuals under age 21”</u>	<u>R9-28-111</u>
<u>57-70.</u> “Inspection of care”	R9-28-105
<u>58-71.</u> “Institutionalized”	R9-28-104
<u>59-72.</u> “JCAHO”	R9-28-101
<u>60-73.</u> “License” or “licensure”	R9-22-101
<u>64-74.</u> “Medical record”	R9-22-101
<u>62-75.</u> “Medical services”	R9-22-101
<u>63-76.</u> “Medical supplies”	R9-22-102
<u>64-77.</u> “Medically eligible”	R9-28-104
<u>65-78.</u> “Medically necessary”	R9-22-101
<u>66-79.</u> “Member”	A.R.S. § 36-2931
<u>80.</u> <u>“Mental disorder”</u>	<u>R9-28-111</u>
<u>67-81.</u> “MMMNA”	R9-28-104
<u>68-82.</u> “NF”	42 U.S.C. 1396r(a)
<u>69-83.</u> “Noncontracting provider”	A.R.S. § 36-2931
<u>70-84.</u> “Occupational therapy”	R9-22-102
<u>85.</u> <u>“Partial care”</u>	<u>R9-28-111</u>
<u>74-86.</u> “PAS”	R9-28-103
<u>72-87.</u> “PASARR”	R9-28-103
<u>73-88.</u> “Pharmaceutical service”	R9-22-102
<u>74-89.</u> “Physical therapy”	R9-22-102
<u>75-90.</u> “Physician”	R9-22-102
<u>76-91.</u> “Post-stabilization services”	42 CFR 438.114
<u>77-92.</u> “Practitioner”	R9-22-102
<u>78-93.</u> “Primary care provider”	R9-22-102
<u>79-94.</u> “Primary care provider services”	R9-22-102
<u>80-95.</u> “Prior authorization”	R9-22-102
<u>81-96.</u> “Private duty nursing services”	R9-22-102
<u>82-97.</u> “Program contractor”	A.R.S. § 36-2931
<u>83-98.</u> “Provider”	A.R.S. § 36-2931
<u>84-99.</u> “Prudent layperson standard”	42 U.S.C. 1396u-2
<u>100.</u> <u>“Psychiatrist”</u>	<u>R9-28-111</u>
<u>101.</u> <u>“Psychologist”</u>	<u>R9-28-111</u>
<u>102.</u> <u>“Psychosocial rehabilitation”</u>	<u>R9-28-111</u>
<u>85-103.</u> “Quality management”	R9-22-105
<u>104.</u> <u>“RBHA”</u>	<u>R9-28-111</u>
<u>86-105.</u> “Radiology”	R9-22-102
<u>87-106.</u> “Reassessment”	R9-28-103
<u>88-107.</u> “Redetermination”	R9-28-104
<u>89-108.</u> “Referral”	R9-22-101
<u>109.</u> <u>“Registered nurse”</u>	<u>R9-28-111</u>
<u>90-110.</u> “Reinsurance”	R9-22-107
<u>94-111.</u> “Representative”	R9-28-104
<u>92-112.</u> “Respiratory therapy”	R9-22-102
<u>93-113.</u> “Respite care”	R9-28-102
<u>94-114.</u> “RFP”	R9-22-105
<u>95-115.</u> “Room and board”	R9-28-102
<u>96-116.</u> “Scope of services”	R9-22-102
<u>117.</u> <u>“Screening”</u>	<u>R9-28-111</u>
<u>97-118.</u> “Speech therapy”	R9-22-102
<u>98-119.</u> “Spouse”	R9-28-104
<u>99-120.</u> “SSA”	P.L. 103-296, Title I
<u>100-121.</u> “SSI”	R9-22-101
<u>101-122.</u> “Subcontract”	R9-22-101
<u>123.</u> <u>“Substance abuse”</u>	<u>R9-28-111</u>

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<u>124.</u> “Treatment”	<u>R9-28-111</u>
102-125. “Utilization management”	<u>R9-22-105</u>
103-126. “Ventilator dependent”	<u>R9-28-102</u>

- B.** General definitions. The following words and phrases, in addition to definitions contained in A.R.S. §§ 36-2901 and 36-2931, and 9 A.A.C. 22, Article 1, have the following meanings unless the context of the Chapter explicitly requires another meaning:
1. “AHCCCS” is defined in 9 A.A.C. 22, Article 1.
 2. “ALTCS” means the Arizona Long-Term Care System as authorized by A.R.S. § 36-2932.
 3. “Alternative HCBS setting” means a living arrangement approved by the Director and licensed or certified by a regulatory agency of the state, where a member may reside and receive HCBS including:
 - a. For a person with a developmental disability (DD) specified in A.R.S. § 36-551:
 - i. Community residential setting defined in A.R.S. § 36-551;
 - ii. Group home defined in A.R.S. § 36-551;
 - iii. State operated group home defined in A.R.S. § 36-591;
 - iv. Family foster home defined in 6 A.A.C. 5, Article 58;
 - v. Group foster home defined in 6 A.A.C. 5, Article 59;
 - vi. Licensed residential facility for a person with traumatic brain injury as specified in A.R.S. § 36-2939(C); and
 - vii. Behavioral health service agency as specified in A.R.S. § 36-2939(B)(2) and 9 A.A.C. 20, Articles 6, 7, and 8 for Levels I, II, or III;
 - b. For a person who is elderly or physically disabled (EPD), provided the facility, setting, or institution is registered with AHCCCS:
 - i. Adult foster care homes defined in A.R.S. § 36-401; and as authorized in A.R.S. § 36-2939; and an assisted living home or a residential unit, as defined in A.R.S. § 36-401, and as authorized in A.R.S. § 36-2939.
 - ii. Licensed residential facility for a person with a traumatic brain injury specified in A.R.S. § 36-2939(C); and
 - iii. Behavioral health service agency specified in A.R.S. § 36-2939(C) and 9 A.A.C. 20, Articles 6, 7, and 8 for ~~levels~~ Levels I and II.
 4. “Case management plan” means a service plan developed by a case manager that involves the overall management of a member’s or an eligible person’s care, and the continued monitoring and reassessment of the member’s or the eligible person’s need for services.
 5. “Case manager” means a person who is either a degreed social worker, a licensed registered nurse, or a person with a minimum of 2 years of experience in providing case management services to a person who is elderly and physically disabled or has developmental disabilities.
 6. “CFR” means Code of Federal Regulations, unless otherwise specified in this Chapter.
 7. “Contract” is defined in 9 A.A.C. 22, Article 1.
 8. “Contractor” is defined in 9 A.A.C. 22, Article 1.
 9. “Day” is defined in 9 A.A.C. 22, Article 1.
 10. “Disenrollment” is defined in 9 A.A.C. 22, Article 1.
 11. “Eligible person” has the meaning in A.R.S. § 36-2931.
 12. “Enrollment” is defined in 9 A.A.C. 22, Article 1.
 13. “Facility” is defined in 9 A.A.C. 22, Article 1.
 14. “Factor” is defined in 9 A.A.C. 22, Article 1.
 15. “HCBS” means home and community based services defined in A.R.S. §§ 36-2931 and 36-2939.
 16. “Home” means a residential dwelling that is owned, rented, leased, or occupied at no cost to a member, including a house, a mobile home, an apartment, or other similar shelter. A home is not a facility, a setting, or an institution, or a portion and any of these, licensed or certified by a regulatory agency of the state as a:
 - a. Health care institution defined in A.R.S. § 36-401;
 - b. Residential care institution defined in A.R.S. § 36-401;
 - c. Community residential facility defined in A.R.S. § 36-551; or
 - d. Behavioral health service facility defined in 9 A.A.C. 20, Articles 6, 7, and 8.
 17. “Hospital” is defined in 9 A.A.C. 22, Article 1.
 18. “ICF-MR means an intermediate care facility for the mentally retarded and is defined in 42 CFR 435.1009 and 440.150.
 19. “IHS” means the Indian Health Services.
 20. “JCAHO” means the Joint Commission on Accreditation of Healthcare Organizations.
 21. “License” or “licensure” is defined in 9 A.A.C. 22, Article 1.
 22. “Medical record” is defined in 9 A.A.C. 22, Article 1.
 23. “Medical services” is defined in 9 A.A.C. 22, Article 1.
 24. “Medically necessary” is defined in 9 A.A.C. 22, Article 1.

25. "Member" has the meaning in A.R.S. § 36-2931.
26. "NF" means nursing facility and is defined in 9 A.A.C. 22, Article 1.
27. "Noncontracting provider" has the meaning in A.R.S. § 36-2931.
28. "Program contractor" has the meaning in A.R.S. § 36-2931.
29. "Provider" has the meaning in A.R.S. § 36-2931.
30. "Referral" is defined in 9 A.A.C. 22, Article 1.
31. "SSA" means Social Security Administration defined in P.L. 103-296, Title I.
32. "SSI" is defined in 9 A.A.C. 22, Article 1.
33. "Subcontract" is defined in 9 A.A.C. 22, Article 1.

R9-28-111. Behavioral Health Services Related Definitions

Definitions. The following words and phrases in this Chapter, in addition to definitions contained in A.R.S. §§ 36-2901 and 36-2931, and 9 A.A.C. 22, Article 1, have the following same meaning as specified in 9 A.A.C. 22, Article 1, unless the context of the Chapter explicitly requires another meaning: "IMD" means an institution for mental disease as defined in 42 CFR 435.1009

ARTICLE 11. BEHAVIORAL HEALTH SERVICES

~~R9-28-1101. Definitions~~

~~The definitions set forth in A.A.C. R9-28-101 and R9-22-1201 apply to terminology in this Article. Where definitions under these rule sections may conflict, the definitions set forth in R9-28-101 are applicable.~~

~~R9-28-1102. Eligibility~~

~~Persons with a behavioral health or substance abuse disorder and eligible pursuant to A.R.S. § 36-2931(5) shall be eligible for covered behavioral health services set forth in R9-28-1104.~~

~~R9-28-1103. Service Delivery System~~

~~Program contractors, including the Administration for counties in which there is no program contractor, shall be responsible for the provision of medically necessary behavioral health services set forth under this Article to members.~~

- ~~1. Program contractors shall determine if members need behavioral health services and, if determined to be medically necessary, arrange for behavioral health services set forth in R9-28-1104.~~
- ~~2. Program contractors shall ensure the provision of covered services through the direct provision of services (if the Administration grants a waiver pursuant to A.R.S. 36-2940(A)) or through contracts or agreements with qualified providers.~~
- ~~3. Program contractors may contract with a Regional Behavioral Health Authority (RBHA) which will be responsible for the provision of behavioral health services through its service provider network.~~

~~R9-28-1104. ALTCS covered Behavioral Health Services~~

~~A. The following general service requirements apply with respect to behavioral health services provided under this Article, subject to all applicable exclusions and limitations set forth in this Article:~~

- ~~1. The service shall be medically necessary, cost effective, and Title XIX reimbursable.~~
- ~~2. The service shall be provided by qualified service providers pursuant to R9-28-1105.~~
- ~~3. Services shall be authorized, as applicable, by the program contractor and shall be consistent with prior authorization, federal certification of need and inspection of care requirements and utilization review standards established by the Director.~~
- ~~4. The person is eligible for Title XIX on the date the service is provided and is not a resident in an institution for mental diseases (MD), unless the member or eligible person is under 21 years of age and in a Title XIX participating inpatient psychiatric facility, or 65 years of age and older and in a Title XIX participating IMD.~~
- ~~5. Services shall be provided in appropriate residential settings which meet state and federal licensing standards and which are allowable under A.R.S. § 36-2939.~~

~~B. The following behavioral health services shall be covered, subject to the limitations and exclusions in this Article and further subject to approval by the Health Care Financing Administration:~~

- ~~1. Inpatient services, including:
 - ~~a. Inpatient hospital services for treatment of acute episodes, generally of a short duration, in participating acute general hospitals.~~
 - ~~b. Inpatient psychiatric facility services under the direction of a psychiatrist, for persons under 21 years of age in a residential treatment center (RTC) or an inpatient psychiatric hospital accredited by the Joint Commission on Accreditation of Health Care Organizations (JCAHO) or an inpatient psychiatric hospital.~~
 - ~~c. IMD services for persons 65 years of age and older.~~
 - ~~d. Limitations:~~~~

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- i. Inpatient substance abuse services initially may be authorized for up to 4 days of medically necessary detoxification. If medically necessary, additional days subsequently may be authorized if ordered by a physician and approved by the program contractor's Medical Director or the Administration.
 - ii. Room and board is not a covered service in residential settings except for inpatient services set forth in subsection (B)(1).
2. Professional services, including:
- a. Individual therapy and counseling provided by a behavioral health professional or a behavioral health technician in face-to-face interaction with the member or eligible person.
 - b. Group and/or family therapy/counseling provided by a behavioral health professional or a behavioral health technician in face-to-face interaction with the member or eligible person and his or her family, and/or spouse or other group.
 - c. Limitations: Only psychiatrists and psychologists may bill independently for services provided. Other behavioral health professionals and behavioral health technicians shall be affiliated with qualified agencies such as a rehabilitation or clinic agency or hospital, and services provided by these individuals shall be billed through that agency.
3. Rehabilitation services, including:
- a. Basic partial care services which are provided by a behavioral health technician following residential or inpatient treatment, or to prevent placement in a more restrictive setting. Basic partial care services are provided within a structured, coordinated, and continuous program of goal-oriented therapeutic activities.
 - b. Intensive partial care services which are provided by a behavioral health professional or a behavioral health technician as an alternative to inpatient care for members or eligible persons who are developmentally disabled. Intensive partial care services are a planned, structured, and coordinated program of intensive care which is scheduled for a minimum of 3 consecutive hours on a regular basis, providing active treatment for full or partial resolution of the member's or eligible person's acute or episodic behavioral health problems and includes on-site visits with a psychiatrist.
 - c. Emergency/crisis behavioral health services provided by a behavioral health professional or a behavioral health technician. Such services are immediate and intensive, time-limited, community-based, face-to-face crisis interventions and resolution services available on a 24-hour basis in situations where a member or eligible person is a danger to self or others.
 - d. Behavior management services provided by a behavioral health professional or a behavioral health technician. Behavior management services primarily involve direct patient behavior management for home and community-based services and may also include services related to activities of daily living and household services incidental to and consistent with the behavioral health rehabilitation needs of the member or eligible person.
4. Evaluation services provided by a behavioral health professional or a behavioral health technician. Evaluation services include the assessment of the member's or eligible person's psychiatric, psychological, or social conditions to determine if a mental disorder exists and, if so, to provide diagnosis for the direction of care.
5. Behavioral health-related services, including:
- a. Psychotropic medications defined by the program contractor Title XIX formulary.
 - b. In addition to the behavioral health services covered in subsection (B), the covered services set forth in R9-28-202 shall incorporate behavioral health needs as appropriate.
6. Limitations:-
- a. Intensive partial care services shall be limited to members or eligible persons whose emotional, behavioral, or substance abuse problems indicate a serious emotional disturbance and/or evidence of abuse or neglect.
 - b. Prevocational or vocational activities and school attendance educational hours are not included in intensive and basic partial care services and shall not be billed simultaneously with these services.
 - c. Emergency/crisis behavioral health services are limited to emergencies or crises as defined in R9-22-101.

R9-28-1105. Qualifications and Standards of Participation for Service Providers

To provide behavioral health services to members or eligible persons, service providers shall comply with requirements set forth in R9-22-1205.

R9-28-1106. Payments

All payments to program contractors shall be made pursuant to the terms and conditions of agreements executed with the Administration in accordance with the requirements set forth in A.A.C. Title 9, Chapter 28, Article 7, unless otherwise specified in this Article.

R9-28-1101. General Requirements

General requirements. The following general requirements apply to behavioral health services provided in this Article, subject to all exclusions and limitations.

A. Administration. The program shall be administered as specified in A.R.S. § 36-2932.

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- B.** Provision of services. Behavioral health services shall be provided in compliance with A.R.S. § 36-2939 and this Chapter.
- C.** Operational authority. The Director has full operational authority to adopt rules as specified in A.R.S. § 36-2932. Specifications in this Article shall apply to contractors and their subcontracted behavioral health providers.
- D.** Laws and regulations. Services shall be provided according to state and federal laws and regulations, the Arizona Administrative Code and the Administration's contractual requirements.
- E.** Definitions. For purposes of this Article, the following definitions apply:
 - 1. "Emergency/crisis behavioral health services" as specified in 9 A.A.C. 20.
 - 2. "Physician assistant" as specified in A.R.S. § 32-2501. In addition, a physician assistant providing a behavioral health service shall work under the supervision of an AHCCCS registered psychiatrist.

R9-28-1102. Contractor Responsibilities

- A.** Contractor responsibilities. Contractors shall be responsible for the provision of behavioral health services in this Article for members.
 - 1. A contractor shall determine if a member needs behavioral health services and, if determined to be medically necessary, arrange for the behavioral health services in R9-28-1105.
 - 2. A contractor shall ensure the provision of covered services through the direct provision of services or through a subcontract or an agreement with qualified providers.
 - 3. A contractor may subcontract for the provision of behavioral health services through its service provider network.
 - 4. A contractor shall coordinate the transition of care and medical records as specified in A.R.S. § 36-2932, R9-28-514 and in contract when a member transitions from:
 - a. A behavioral health provider to another behavioral health provider.
 - b. A RBHA to a contractor.
 - c. A contractor to a RBHA, or
 - d. A contractor to a contractor.
- B.** Administration responsibilities. The Administration shall be responsible for the provision of behavioral health services in this Article for members in counties if there is no contractor.

R9-28-1103. Eligibility for Covered Services

- A.** Eligibility for covered services. A member determined eligible according to A.R.S. § 36-2934 shall receive the medically necessary covered services specified in R9-28-1105.
- B.** Ineligibility. A person is not eligible for behavioral health services if the person is:
 - 1. An inmate of a public institution as defined in 42 CFR 435.1009.
 - 2. A resident of an institution for the treatment of tuberculosis, or
 - 3. Age 21 through 64 and a resident of an IMD.

R9-28-1104. General Service Requirements

- A.** Services. Behavioral health services include both mental health and substance abuse services.
- B.** Medical necessity. A service shall be medically necessary as specified in R9-28-201.
- C.** Requirements. A service shall be consistent with R9-28-201 and R9-28-511.
- D.** Prior authorization. A service shall be provided consistent with prior authorization requirements established by the Director and specified in R9-28-1105. Payment for services or items requiring prior authorization may be denied if prior authorization is not obtained.
- E.** EPSDT. For Title XIX members, EPSDT services shall include all medically necessary Title XIX covered services necessary to treat a behavioral health problem.
- F.** Experimental services. Experimental services as determined by the Director, or a service provided primarily for the purposes of research shall not be covered.
- G.** Gratuities. A service or an item, if furnished gratuitously, are not covered and payment shall be denied.
- H.** Service area. Behavioral health services rendered to a member shall be provided within a member's service area except when:
 - 1. A primary care provider refers a member out of a contractor's area for medical specialty care.
 - 2. A covered service that is medically necessary for a member is not available within the service area.
 - 3. A net savings in behavioral health service delivery costs can be documented without requiring undue travel time or hardship for a member or a member's family.
 - 4. A member is placed in a NF or Alternative HCBS setting located out of a contractor's service area, or
 - 5. A service is otherwise authorized based on practice patterns and cost or scope of service considerations.
- I.** Travel. When a member is traveling or temporarily residing out of a service area, covered services are restricted to emergency care, unless otherwise authorized by a member's contractor.
- J.** Non-covered services. If a member requests the provision of a behavioral health service that is not covered by the Administration or is not authorized by a contractor, the service may be rendered to a member by an AHCCCS registered behavioral health service provider under the following conditions:

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1. A document that lists the requested services and the itemized cost of each is prepared by a contractor and provided to a member or a guardian; and
 2. The signature of the member, or the member's guardian, is obtained in advance of service provision indicating that the services have been explained to the member or guardian and that the member or guardian accepts responsibility for payment.
- K.** Referral. If a member is referred out of a contractor's service area to receive an authorized medically necessary behavioral health service for an extended period of time, all other medically necessary covered services for a member shall also be provided by a contractor during that time.
- L.** Restrictions and limitations. The restrictions, limitations, and exclusions in this Article shall not apply to a contractor when electing to provide a non-covered service.
1. The costs associated with providing any non-covered service to a member shall not be included in development or negotiation of capitation.
 2. Non-covered services shall be paid from administrative revenue or other funds, unrelated to Title XIX services.
- M.** Residential placement. Behavioral health services are covered in an Alternative HCBS setting or home as specified in R9-28-101(B). Room and board is not a covered service as defined in R9-28-102 unless provided in an inpatient facility as specified in R9-28-1105(B).
- N.** Appropriate settings. A service shall be provided in an appropriate Alternative HCBS setting which meet state and federal licensing standards and which are allowable under A.R.S. § 36-2939.

R9-28-1105. Scope of Behavioral Health Services

- A.** Covered services. The following behavioral health services shall be covered, subject to the limitations and exclusions in this Article.
- B.** Inpatient behavioral health services.
1. Inpatient care shall include all behavioral health services, medical detoxification, accommodations and staffing, supplies and equipment. Services shall be provided under the direction of a physician in:
 - a. A general acute care hospital;
 - b. An inpatient psychiatric facility for a person under 21 years of age, licensed as a psychiatric hospital or a residential treatment center licensed as a Level I Psychiatric Facility and accredited by an AHCCCS approved accrediting body as specified in contract and authorized by federal laws and regulations; or
 - c. An IMD for a member age 21 through 64, licensed as a psychiatric hospital or a NF.
 2. Inpatient service limitations:
 - a. Inpatient services, other than emergency services specified in this Section, shall be prior authorized.
 - b. Services shall be reimbursed on a per diem basis and shall be inclusive of all services except, the following practitioners may bill independently for services:
 - i. A psychiatrist,
 - ii. A certified psychiatric nurse practitioner,
 - iii. A physician assistant as defined in this Article, or
 - iv. A psychologist.
 - c. The following services may be billed independently when prescribed for a member residing in a residential treatment center as specified in R9-28-1105(B)(1)(b):
 - i. Laboratory,
 - ii. Radiology, and
 - iii. Psychotropic medications and medication monitoring and medication adjustment.
 - d. A member age 21 through 64 is not eligible for services provided in an IMD.
- C.** Partial care.
1. Partial care shall be provided as either a basic or intensive level of care as medically necessary to meet a member's need for behavioral health treatment and prevent placement in a higher level of care or more restrictive environment.
 - a. Basic partial care services shall be provided by a behavioral health professional or a behavioral health technician under the direction of a psychiatrist, a psychologist, a certified psychiatric nurse practitioner or a physician assistant to prevent the need for a more structured environment.
 - b. Intensive partial care services shall be provided by a behavioral health professional or a behavioral health technician under the direction of a psychiatrist, a psychologist, a certified psychiatric nurse practitioner or a physician assistant as an alternative to inpatient care.
 2. Partial care service limitations and exclusions:
 - a. All services shall be included in the partial care reimbursement rate except, the following practitioners may bill independently:
 - i. A psychiatrist,
 - ii. A certified psychiatric nurse practitioner,
 - iii. A physician assistant as defined in this Article, and

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iv. A psychologist.

b. Vocational activities, school attendance and educational hours shall not be included as a basic and intensive partial care service and shall not be billed simultaneously with these services.

D. Outpatient services.

1. Outpatient services shall include the following:

a. Screening provided by a behavioral health professional or a behavioral health technician;

b. Evaluation provided by a behavioral health professional;

c. Counseling including individual therapy, group and family therapy provided by a behavioral health professional, or a behavioral health technician under clinical supervision from a behavioral health professional;

d. Behavior management provided by a behavioral health technician or a behavioral health paraprofessional; and

e. Psychosocial rehabilitation provided by a behavioral health technician or a behavioral health paraprofessional.

2. Outpatient service limitations:

a. The following practitioners may bill independently:

i. A psychiatrist,

ii. A certified psychiatric nurse practitioner,

iii. A physician assistant as defined in this Article, and

iv. A psychologist.

b. Other behavioral health professionals and behavioral health technicians shall be affiliated with, and services billed through, an AHCCCS registered behavioral health agency.

E. Behavioral health emergency services.

1. Behavioral health emergency services may be provided on either an inpatient or outpatient basis. Each contractor shall ensure services are provided by qualified personnel and are available 24 hours-per-day, 7 days-per-week in a contractor service area in situations where a member is a danger to self or others or is otherwise determined to be in need of immediate, unscheduled behavioral health services.

2. A provider of emergency services shall verify the eligibility and enrollment status for a member through the Administration to determine the need for notification to a contractor, and to determine the party responsible for payment of services as specified in 9 A.A.C. 28, Article 7.

3. Prior authorization for a consultation provided by a psychiatrist, a certified psychiatric nurse practitioner, a physician assistant, or a psychologist is not required if necessary to evaluate or stabilize an emergent episode of mental disorder.

4. Inpatient service limitations as specified in this Section shall apply to emergency services provided on an inpatient basis.

F. Other behavioral health services. Other behavioral health services shall include:

1. Laboratory and radiology services for behavioral health diagnosis and medication management;

2. Psychotropic medications and related medications included in a contractor's formulary; and

3. Medication monitoring, administration and adjustment for psychotropic medications and related medications.

G. Transportation services.

1. Emergency transportation shall be covered for a behavioral health emergency as specified in R9-22-211. Emergency transportation shall be limited to behavioral health emergency situations specified in R9-28-1105(E).

2. Non-emergency transportation to and from settings providing covered behavioral health services shall be covered when prior authorized by a contractor.

R9-28-1106. General Provisions and Standards for Service Providers

A. Qualified service provider standards. A qualified behavioral health service provider shall, at a minimum:

1. Be employed by, or contracted in writing with, a contractor or a contractor's subcontractor to provide behavioral health services to a member;

2. Have all applicable state licenses or certifications, or comply with alternative requirements established by the Administration;

3. Register with the Administration as a service provider; and

4. Comply with all applicable criteria under 9 A.A.C. 28, Article 5, and this Article.

B. Quality and Utilization management.

1. Service providers shall cooperate with quality and utilization management programs of the contractor, ADHS and the Administration as specified in R9-28-511 and contract.

2. Service providers shall comply with applicable procedures as specified in 42 CFR 456 as of August 23, 1996, which is incorporated by reference and on file with the administration and the Office of the Secretary of State. This incorporation by reference contains no future editions or amendments.

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R9-28-1107. Standards for Payments

- A.** Payments to contractors. All payments to contractors shall be made as specified in the terms and conditions of agreements executed with the Administration according to the requirements in 9 A.A.C. 28, Article 7, unless otherwise specified in this Article.
- B.** Prior authorization. Payment for services or items requiring prior authorization may be denied if prior authorization has not been obtained.

R9-28-1108. Grievance and Appeal Process

- A.** Processing of a grievance. All grievances relating to any adverse action, decision, or policy regarding behavioral health issues shall be processed according to A.R.S. §§ 36-2932, 41-1092.02 and 9 A.A.C. 28, Article 8 and 9 A.A.C. 28, Article 12.
- B.** Member appeal. A member's appeal of a grievance decision under this Article shall be conducted as a contested case as specified in 9 A.A.C. 28, Article 8.
- C.** Other appeals. An appeal of a director's decision following an Office of Administration Hearing decision other than de novo hearing requests by a member shall be limited to an appellate review by the Administration to determine whether substantial evidence in the record supports the decision.

NOTICE OF PROPOSED RULEMAKING

TITLE 9. HEALTH SERVICES

**CHAPTER 31. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM (AHCCCS)
CHILDREN'S HEALTH INSURANCE PROGRAM**

PREAMBLE

1. Sections Affected

	<u>Rulemaking Action</u>
R9-31-101	Amend
R9-31-112	Amend
Article 12	Repeal
Article 12	New Article
R9-31-1201	Repeal
R9-31-1201	New Section
R9-31-1202	Repeal
R9-31-1202	New Section
R9-31-1203	Repeal
R9-31-1203	New Section
R9-31-1204	Repeal
R9-31-1204	New Section
R9-31-1205	Repeal
R9-31-1205	New Section
R9-31-1206	Repeal
R9-31-1206	New Section
R9-31-1207	Repeal
R9-31-1207	New Section
R9-31-1208	New Section

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

Authorizing statute: A.R.S. § 36-2986

Implementing statute: A.R.S. § 36-2986

3. A list of all previous notices appearing in the Register addressing the proposed rule:

Notice of Rulemaking Docket Opening: 5 A.A.R. 2742, August 13, 1999.

4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:

Name: Cheri Tomlinson, Federal and State Policy Administrator

Address: AHCCCS Administration, Office of Policy Analysis and Coordination
801 East Jefferson Street, Mail Drop 4200

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Phoenix, AZ 85034

Telephone: (602) 417-4198

Fax: (602) 256-6756

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

Title 9, Chapter 31, Article 12 has been opened for the following reasons:

- To make the language comply with Laws 1999, Ch. 313, § 36, which shifts the responsibility for behavioral health services for non-seriously mentally ill (non-SMI) 18, 19 and 20 year old members from the AHCCCS health plans to the Arizona Department of Health Services (ADHS). Since the Children's Health Insurance Program only covers children through the age of 18, only 18 year old members will be affected by this change;
- To make the language conform with current agency practice regarding behavioral health services;
- To make the language comply with the Secretary of State's requirements; and
- To make the language more clear, concise and understandable.

6. A reference to any study that the agency proposes to rely on in its evaluation of or justification for the proposed rule and where the public may obtain or review the study, all data underlying each study, any analysis of the study and other supporting material:

Not applicable.

7. 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.

8. The preliminary summary of the economic, small business, and consumer impact:

The AHCCCS Administration, ADHS, each Regional Behavioral Health Authority (RBHA), and each AHCCCS health plan will be moderately impacted by the changes in rule language due to the shift in responsibility for the 18 year old non-SMI population from the health plans to ADHS. The Administration will have to implement several operational changes as well as monitor the transition of this population from 1 delivery system to another. ADHS will have to amend its contract with each RBHA as well as coordinate and monitor the transition of members from the health plans to the RBHAs. Each RBHA will have to update its contracts with its providers as well as transition members from 1 provider to another. AHCCCS providers that are business entities may be minimally affected because they could lose or gain members due to the change. AHCCCS members that are 18, 19 and 20 year old non-SMI members that are receiving behavioral health services when the change goes into effect will be moderately impacted due to the transition from the health plan system to the RBHA system.

In addition, the AHCCCS Administration, the ADHS and each RBHA will be impacted by the change in state law that states the Office of Administrative Hearings (OAH) shall be responsible for conducting evidentiary hearings involving the AHCCCS program effective July 1, 1999. Each entity will be impacted because of the change in the hearing process.

9. 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: Cheri Tomlinson, Federal and State Policy Administrator

Address: AHCCCS Administration, Office of Policy Analysis and Coordination
801 East Jefferson Street, Mail Drop 4200
Phoenix, AZ 85034

Telephone: (602) 417-4198

Fax: (602) 256-6756

10. The time, place, and nature of the proceedings for the making, 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:

Date: September 29, 1999

Time: 1 p.m.

Location: Arizona Department of Health Services/Behavioral Health Services
2122 East Highland, Suite 100
Phoenix, AZ 85016
Fir Conference Room

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Location: Community Partnership of Southern Arizona
4575 East Broadway Road
Tucson, AZ 85711
Pima Conference Room

Location: Northern Arizona Regional Behavioral Health Authority
125 East Elm Street
Flagstaff, AZ 86001
Downstairs/Main Conference Room

Nature: Teleconference oral proceeding

Written comments shall be submitted not later than 5 p.m., September 29, 1999, to the following person:

Name: Cheri Tomlinson, Federal and State Policy Administrator

Address: AHCCCS Administration, Office of Policy Analysis and Coordination
801 East Jefferson Street, Mail Drop 4200
Phoenix, AZ 85034

Telephone: (602) 417-4198

Fax: (602) 256-6756

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:

42 CFR 456 as of August 23, 1996, incorporated in R9-31-1206.

13. The full text of the rules follows:

TITLE 9. HEALTH SERVICES

**CHAPTER 31. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM (AHCCCS)
CHILDREN'S HEALTH INSURANCE PROGRAM**

ARTICLE 1. DEFINITIONS

Sections

R9-31-101. Location of Definitions

R9-31-112. Covered Behavioral Health Services Related Definitions

ARTICLE 12. ~~COVERED BEHAVIORAL HEALTH SERVICES~~ BEHAVIORAL HEALTH SERVICES

Sections

R9-31-1201. General Requirements

~~R9-31-1202. Inpatient Behavioral Health Services Repealed~~

~~R9-31-1202. ADHS and Health Plan Responsibilities~~

~~R9-31-1203. Partial Care Repealed~~

R9-31-1203. Eligibility for Covered Services

~~R9-31-1204. Outpatient Services Repealed~~

R9-31-1204. General Service Requirements

~~R9-31-1205. Behavioral Health Emergency and Crisis Stabilization Services Repealed~~

~~R9-31-1205. Scope of Behavioral Health Services~~

~~R9-31-1206. Other Behavioral Health Services Repealed~~

R9-31-1206. General Provisions and Standards for Service Providers

~~R9-31-1207. Transportation Services Repealed~~

R9-31-1207. Standards for Payments

R9-31-1208. Grievance and Appeal Process

ARTICLE 1. DEFINITIONS

R9-31-101. Location of Definitions

- A. For purposes of this Article the term member shall be substituted for the term eligible person.
B. Location of definitions. Definitions applicable to this Chapter are found in the following.

<i>Definition</i>	<i>Section or Citation</i>
1. "1 st -party liability"	R9-22-110
2. "3 rd -party"	R9-22-110
3. "3 rd -party liability"	R9-22-110
4. "Accommodation"	R9-22-107
5. "Action"	R9-31-113
6. "Acute mental health services"	R9-22-112
7. "Administration"	R9-31-101
8. "Aggregate"	R9-22-107
9. "AHCCCS"	R9-31-101
10. "AHCCCS hearing officer"	R9-22-108
11. "Ambulance"	R9-22-102
12. "Ancillary department"	R9-22-107
13. "Appeal"	R9-22-108
14. "Appellant"	R9-31-108
15. "Applicant"	R9-31-101
16. "Application"	R9-31-101
17. "ADHS"	R9-31-112
18. " <u>Behavior management services</u> "	<u>R9-31-112</u>
19. " <u>Behavioral health paraprofessional</u> "	<u>R9-31-112</u>
18-20. "Behavioral health professional"	R9-31-112
19-21. "Behavioral health services <u>service</u> "	R9-31-112
20-22. "Behavioral health technician"	R9-31-112
21-23. "Billed charges"	R9-22-107
24. " <u>Board eligible for psychiatry</u> "	<u>R9-31-112</u>
22-25. "Capital costs"	R9-22-107
23-26. "Case management" <u>services</u> "	R9-31-112
24-27. "Certified nurse practitioner"	R9-31-102
25-28. "Certified psychiatric nurse practitioner"	R9-31-112
26-29. "Child"	42 U.S.C. 1397jj
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147.160. “Tribal facility”	A.R.S. § 36-2981
148.161. “Utilization management”	R9-22-105

C. General definitions. The words and phrases in this Chapter have the following meanings unless the context explicitly requires another meaning:

1. “Administration” means the Arizona Health Care Cost Containment System, its agents, employees and designated representatives.
2. “AHCCCS” means the Arizona Health Care Cost Containment System, which is composed of the Administration, contractors, and other arrangements through which health care services are provided to a member.
3. “Applicant” means a person who submits, or on whose behalf is submitted, a written, signed, and dated application for Title XXI benefits which has not been completed or denied.

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4. "Application" means an official request for Title XXI benefits made in accordance with Article 3.
5. "Contractor" means a health plan that contracts with the Administration for the provision of hospitalization and medical care to members according to the provisions of this Article or a qualifying plan.
6. "Contract year" means the date beginning on October 1 and continuing until September 30 of the following year.
7. "Inpatient hospital services" means medically necessary services that require an inpatient stay in an acute hospital. Inpatient hospital services are provided by or under the direction of a physician or other health care practitioner upon referral from a member's primary care provider.

R9-31-112. Covered Behavioral Health Services Related Definitions

Definitions. The words and phrases in this Chapter have the following meanings unless the context explicitly requires another meaning:

1. "ADHS" means the Arizona Department of Health Services which is the department mandated to serve the public health needs of all Arizona residents.
2. "Behavior management services" as specified in 9 A.A.C. 20.
3. "Behavioral health paraprofessional" as defined in 9 A.A.C. 20, Article 1.
- ~~2.4.~~ "Behavioral health professional" means a psychiatrist, psychologist, social worker, counselor, certified nurse practitioner, registered nurse, or physician's assistant who meets appropriate licensure requirements or certification requirements as defined in 9 A.A.C. 20, Article 1.
- ~~3.5.~~ "Behavioral health services service" means those Title XXI covered and medically necessary treatment services for behavioral health or substance abuse disorders as specified in this Chapter as defined in 9 A.A.C. 20, Article 1.
- ~~4.6.~~ "Behavioral health technician" means an individual with a:
 - a) Bachelor's degree in a behavioral health-related field;
 - b) Bachelor's degree in any field, plus 1 year of experience in a behavioral health service delivery;
 - e) A high school diploma or GED and a combination of behavioral health education and experience totaling 4 years. Behavioral health technicians shall be supervised by a behavioral health professional or a clinical supervisor as defined in 9 A.A.C. 20, Article 1.
7. "Board eligible for psychiatry" means documentation of completion of an accredited psychiatry residency program approved by the American College of Graduate Medical Education, or the American Osteopathic Association. Documentation would include either a certificate of residency training including exact dates, or a letter of verification of residency training from the training director including the exact dates of training.
- ~~5.8.~~ "Case management services" means a set of supportive service services and activities to that enhance treatment, compliance and effectiveness. Case management services may be telephonic, may vary in frequency and intensity based on member need, and are ordered by or provided by or under the clinical supervision of the assigned behavioral health professional. This definition shall only be applicable for purposes of 9 A.A.C. 31, Article 12.
- ~~6.9.~~ "Certified psychiatric nurse practitioner" means a registered nurse certified by the Arizona Board of Nursing in A.R.S. Title 32, Chapter 15 as having a specialty in psychiatric care. Only a certified psychiatric nurse practitioner with a psychiatric and mental health certification may bill for covered behavioral health services as specified in A.R.S. § 32-1601 and certified under the American Nursing Association's Statement and Standards for Psychiatric-Mental Health Clinical Nursing Practice as specified in R4-19-505.
10. "Clinical supervision" as specified in 9 A.A.C. 20.
11. "De novo hearing" as defined in 42 CFR 431.202.
12. "Evaluation" means the assessment of a member's medical, psychological, psychiatric, or social conditions to determine if a behavioral health disorder exists and if so, to establish a treatment plan for all medically necessary services.
13. "IMD" means an Institution for Mental Diseases as described in 42 CFR 435.1009 and licensed by ADHS.
14. "Inpatient psychiatric facilities for individuals under age 21" means a licensed hospital or a psychiatric hospital or a Residential Treatment Center (RTC) licensed as a Level I behavioral health facility by ADHS and accredited by an AHCCCS approved accrediting body as specified in contract and authorized by federal law or regulations. These facilities provide room and board and treatment for behavioral health problems of an individual who is under 21 years of age.
15. "Mental disorder" as defined in A.R.S. § 36-501.
16. "Partial Care"
 - a. "Basic partial care" as specified in 9 A.A.C. 20.
 - b. "Intensive partial care services" as specified in 9 A.A.C. 20.
- ~~7.17.~~ "Psychiatrist" means a psychiatrist who is professionally licensed according to A.R.S. Title 32, Chapter 13 or Chapter 17, Board certified or Board eligible under the standards of the American Board of Psychiatry and Neurology or the Osteopathic Board of Neurology and Psychiatry as specified in A.R.S. §§ 32-1401 or 32-1800 and 36-501.
- ~~8.18.~~ "Psychologist" means a person who is licensed by the Arizona Board of Psychologist Examiners according to A.R.S. Title 32, Chapter 19.1 as specified in A.R.S. §§ 32-2061 and 36-501.
19. "Psychosocial rehabilitation" as specified in 9 A.A.C. 20.

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- ~~20.~~ “RBHA” means the Regional Behavioral Health Authority which is an organization under contract with ADHS to coordinate the delivery of behavioral health services in a geographically specific service area of the state. as defined in 9 A.A.C. 21, Article 1.
- ~~9-21.~~ “Registered nurse” as defined in A.R.S. § 32-1601. In addition, a registered nurse providing a behavioral health service to a member must have a minimum of 1 year of experience in a behavioral health related field as specified in 9 A.A.C. 20, Article 1.
- ~~22.~~ “Screening” means a face-to-face interaction with a member to determine the need for behavioral health services and the assignment of a member for further evaluation, diagnosis or care and treatment.
- ~~10-23.~~ “Substance abuse” means the chronic, habitual or compulsive use of any chemical matter which, when introduced into the body, is capable of altering human behavior or mental functioning and, with extended use, may cause psychological or physiological dependence and/or impaired mental, social or educational functioning. Nicotine addiction is not considered substance abuse. as defined in 9 A.A.C. 20, Article 1.
- ~~11-24.~~ “Treatment” means the range of behavioral health care received by a member that is consistent with the therapeutic goals outlined in the individual service plan. as defined in 9 A.A.C. 20, Article 1.

ARTICLE 12. COVERED BEHAVIORAL HEALTH SERVICES

~~R9-31-1201. General Requirements~~

- ~~A.~~ The Administration shall administer the program as specified in A.R.S. § 36-2982 and behavioral health services shall be provided in compliance with A.R.S. § 36-2989 and this Chapter.
- ~~B.~~ The Director has full operational authority to adopt rules or to use the appropriate rules adopted as specified in A.R.S. § 36-2986. Specifications in this Article shall apply to:
- ~~1.~~ ADHS, RBHAs and a behavioral health provider under contract with a RBHA; and
 - ~~2.~~ A contractor and its subcontracted behavioral health providers.
- ~~C.~~ Behavioral health services shall be provided through an IGA with ADHS for a member enrolled with a RBHA and who is under 18 years of age, or is 18 years of age and determined SMI. ADHS shall:
- ~~1.~~ Contract with a RBHA for the provision of, at a minimum, behavioral health services specified in this Article and in contract. A RBHA shall provide services directly or through subcontract with qualified service providers within and, if unavailable, outside their service areas.
 - ~~2.~~ Use its established diagnostic and evaluation program for referral of a child who is not already enrolled and who may be in need of behavioral health services. In addition to an evaluation, the ADHS shall also identify a child who may be eligible under A.R.S. §§ 36-2901 or 36-2931 and shall refer the child to the appropriate agency responsible for making the final eligibility determination.
 - ~~3.~~ Refer a member who is 18 years old who is not SMI to a member’s assigned contractor for behavioral health services.
- ~~D.~~ A contractor shall provide, at a minimum, behavioral health services specified in this Article and in contract for a member who is 18 years of age and is not SMI. A contractor shall:
- ~~1.~~ Provide services directly or through subcontract with qualified behavioral health providers within and, if unavailable, outside their service areas.
 - ~~2.~~ Refer a member who is under 18 years of age, or who is 18 years old and SMI, to a RBHA for behavioral health services.
 - ~~3.~~ For a member other than an 18 year old non-SMI, emergency crisis stabilization services not to exceed three days per episode and 12 days per year contract year for a member not yet enrolled with a RBHA.
- ~~E.~~ ADHS, its subcontractors and AHCCCS acute care contractors shall cooperate as specified in contract when a transition from one entity to another becomes necessary. For a Title XXI member, this transition shall include tracking and reporting of services used by a member toward the annual limitations prior to the transfer of care.
- ~~F.~~ Behavioral health services provided to a member shall be medically necessary and provided in collaboration with the member’s primary care provider.
- ~~G.~~ Services shall be rendered in accordance with state and federal laws and regulations, the Arizona Administrative Code and AHCCCS contractual requirements.
- ~~H.~~ Experimental services as determined by the Director, or services provided primarily for the purpose of research, shall not be covered.
- ~~I.~~ Services or items, if furnished gratuitously, are not covered and payment shall be denied.
- ~~J.~~ Behavioral health services shall not be covered if provided to:
- ~~1.~~ An inmate of a public institution;
 - ~~2.~~ A person who is a resident of an institution for the treatment of tuberculosis; or
 - ~~3.~~ A person who is in an institution for the treatment of mental diseases at the time of application, or at the time of re-determination.
- ~~K.~~ Services shall be provided by personnel or facilities, appropriately licensed or certified to provide the specific service and registered with AHCCCS.

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- ~~**L.** Payment for services or items requiring prior authorization may be denied if prior authorization is not obtained.
 - 1. Prior authorization for behavioral health services provided to a RBHA member shall be obtained from a RBHA in which a member is enrolled.
 - 2. A contractor shall provide prior authorization for a behavioral health service to be provided to a member not yet enrolled with a RBHA and an 18 year old non-SMI member.
 - 3. An emergency behavioral health service does not require prior authorization. Services for unrelated conditions, requiring additional diagnostic and treatment procedures, require additional prior authorization from the responsible contractor.~~
- ~~**M.** Behavioral health services rendered to a member shall be provided within the member's service area except when:
 - 1. A covered service that is medically necessary for a member is not available within the service area;
 - 2. A net savings in behavioral health service delivery costs can be documented without requiring undue travel time or hardship for a member or a member's family;
 - 3. A member is placed in a treatment facility located out of the service area; or
 - 4. The service is otherwise authorized based on practice patterns, and cost or scope of service considerations.~~
- ~~**N.** When a member is traveling or temporarily residing out of the service area, covered services are restricted to emergency care, unless otherwise authorized by the member's RBHA or contractor.~~
- ~~**O.** If a member requests the provision of a behavioral health service that is not covered under these rules or is not authorized, the service may be rendered to a member by an AHCCCS registered behavioral health service provider under the following conditions:
 - 1. A document that lists the requested services and the itemized cost of each is prepared and provided to a member; and
 - 2. The signature of the member, or the member's guardian, is obtained in advance of service provision indicating that the services have been explained to the member or guardian and that the member or guardian accepts responsibility for payment.~~
- ~~**P.** If a member is referred out of the contractor's service area to receive an authorized medically necessary behavioral health service for an extended period of time, all other medically necessary covered services for the member shall also be provided by the contractor during that time.~~
- ~~**Q.** The restrictions, limitations, and exclusions in this Article shall not apply to a contractor and a ADHS RBHA when electing to provide a noncovered service.
 - 1. The costs associated with providing any noncovered service to a member shall not be included in development or negotiation of capitation.
 - 2. Noncovered services shall be paid from administrative revenue or other funds, unrelated to Title XXI services.~~
- ~~**R.** Behavioral health and substance abuse disorders are covered services in this Article.~~
- ~~**S.** The grievance and appeal process specified in 9 A.A.C. 31, Article 8 shall apply to behavioral health services.~~
- ~~**T.** Payment terms and conditions specified in 9 A.A.C. 31, Article 7 shall apply to a contractor and a ADHS RBHA for behavioral health services.~~
- ~~**U.** Quality management and utilization management requirements specified in 9 A.A.C. 31, Article 5 shall apply to a behavioral health service delivery.~~

R9-31-1202. Inpatient Behavioral Health Services

- ~~**A.** Inpatient care shall include accommodations and appropriate staffing, supplies, equipment and behavioral health services. Services shall be provided in:
 - 1. A general acute care hospital,
 - 2. A psychiatric hospital, or
 - 3. An inpatient psychiatric facility for persons under 21 years of age.~~
- ~~**B.** The following limitations shall apply to inpatient care:
 - 1. Services are limited to a maximum of 30 days during each contract year.
 - 2. Only psychiatrists, certified psychiatric nurse practitioners, and psychologists may bill independently for authorized services provided. All other services shall be included in the facility reimbursement rate. Professional services by psychiatrists, certified nurse practitioners, and psychologists, which are provided in an inpatient setting do not count toward the 30-day 30-visit annual limitation.
 - 3. Medical detoxification services may be initially authorized for up to 4 days. When medically necessary, additional days may be authorized if ordered by a psychiatrist or certified psychiatric nurse practitioner and approved by a Medical Director of a RBHA or a contractor.~~

R9-31-1203. Partial Care

- ~~**A.** Partial care shall be provided on either an intensive or basic level of care as medically necessary to meet a member's needs for behavioral health treatment and prevent placement in a higher level of care or more restrictive environment.~~
- ~~**B.** The following limitations shall apply to partial care services:
 - 1. Services are counted toward the maximum of 30 days during each contract year.~~

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- a. Each full day of partial care, basic or intensive, counts as 1/2 day of inpatient care.
- b. Each 1/2 day of partial care, basic or intensive, counts as 1/4 day of inpatient care.
2. Intensive partial care services shall be limited to a member whose emotional, behavioral, or substance abuse problems indicates a serious emotional disturbance and or both evidence of abuse or neglect.
3. Prevocational or vocational activities, school attendance and educational hours shall not be included as an intensive and basic partial care service and shall not be billed simultaneously with these services.

R9-31-1204. Outpatient Services-

A. Outpatient services as specified in contract shall include the following services:

1. Evaluation and diagnosis;
2. Counseling including individual therapy, group and family therapy;
3. Behavior management; and
4. Psycho-social rehabilitation.

B. The following limitations shall apply to outpatient services:

1. The total number of all outpatient services shall not exceed a maximum of 30 visits during each contract year.
2. Each outpatient service except group therapy or group counseling shall count as 1 visit. Each group therapy or group counseling service shall count as 1/2 visit.
3. Only psychiatrists, certified psychiatric nurse practitioners and psychologists may bill independently for services provided.
4. Other behavioral health professionals and behavioral health technicians shall be affiliated with, and their services billed through, a licensed behavioral health agency.

R9-31-1205. Behavioral Health Emergency and Crisis Stabilization Services

A. Behavioral health emergency and crisis stabilization services may be provided on either an inpatient or outpatient basis by qualified personnel and be available 24 hours per day, 7 days per week in each RHBA's service area.

B. Consultation provided by a psychiatrist, a certified psychiatric nurse practitioner, or a psychologist shall be covered as an emergency service if required to evaluate or stabilize an acute episode of mental illness or substance abuse.

C. Limitations on behavioral health emergency or crisis stabilization services:

1. Contractors shall provide inpatient behavioral health emergency or crisis stabilization services not to exceed 3 days per episode and 12 days per year, from the time of a member's enrollment under Title XXI, for a member who is under age 18 or is 18 years old and SMI, but not enrolled with a RHBA.
2. Inpatient service limitations shall apply to emergency or crisis stabilization services provided on an inpatient basis as specified in R9-31-1202(B).
3. Emergency or crisis intervention services provided on an outpatient basis by a psychiatrist, certified psychiatric nurse practitioner, psychologist, or qualified facility shall not count towards the outpatient service limitation as specified in R9-31-1204(B)(1) and (2).

R9-31-1206. Other Behavioral Health Services

The following services are covered but are not included in the visit limitations:

1. Laboratory and radiology services for behavioral health diagnosis and medication management;
2. Psychotropic medication(s) included in the Title XXI formulary of a member's RBHA or contractor;
3. Medication monitoring, administration and adjustment for psychotropic medications; and
4. Case management to identify, obtain and coordinate Title XXI behavioral health services as specified in contract.

R9-31-1207. Transportation Services

A. Emergency transportation shall be covered for behavioral health emergencies as specified in R9-31-211 and shall be limited to situations where there is an imminent threat of harm to the member if care is not rendered expeditiously.

B. Non-emergency transportation for behavioral health services is excluded.

ARTICLE 12. BEHAVIORAL HEALTH SERVICES

R9-31-1201. General Requirements

General requirements. The following general requirements apply to behavioral health services provided in this Article, subject to all exclusions and limitations.

A. Administration. The program shall be administered as specified in A.R.S. § 36-2982.

B. Provision of services. Behavioral health services shall be provided in compliance with A.R.S. § 36-2989 and this Chapter.

C. Operational authority. The Director has full operational authority to adopt rules as specified in A.R.S. § 36-2986.

D. Laws and regulations. Services shall be rendered according to state and federal laws and regulations, the Arizona Administrative Code and the Administration's contractual requirements.

E. Definitions. For purposes of this Article, the following definitions apply:

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1. “Alternative Residential Care Facility” means an ADHS-licensed facility with 16 or fewer beds. Alternative residential care facilities include licensed Level II and III facilities as well as Level I facilities licensed to provide emergency services, detoxification services, or both.
2. “Emergency/crisis behavioral health services” as specified in 9 A.A.C. 20.
3. “Health plan” means a plan who contracts directly with AHCCCS to provide services specified by the contract and these rules.
4. “IMD” means an Institution for Mental Diseases which is a facility as described in 42 CFR 435.1009 and licensed by ADHS.
5. “Physician assistant” as specified in A.R.S. § 32-2501. In addition, a physician assistant providing a behavioral health service shall work under the supervision of an AHCCCS registered psychiatrist.
6. “TRBHA” means the Tribal Regional Behavioral Health Authority. Tribal governments, through an IGA with ADHS may operate a Tribal Regional Behavioral Health Authority for the provision of behavioral health services to a Native American member.

R9-31-1202. ADHS and Health Plan Responsibilities

A. ADHS responsibilities. Behavioral health services shall be provided through a contract with ADHS.

1. ADHS shall:
 - a. Be responsible as specified in A.R.S. § 36-2989, for the provision of behavioral health services in this Article for all members.
 - b. Contract with a RBHA for the provision of behavioral health services in R9-31- 1205 for a member. A RBHA shall provide services directly or through contracts with qualified service providers as specified in R9-31-1206 within and, if the service is unavailable, outside a RBHA’s service area.
 - c. Use its diagnostic and evaluation program for referral of a child, for an eligibility determination, who is not already enrolled with KidsCare under A.R.S. § 36-2986 and who may be in need of behavioral health services.
 - d. Ensure that a member’s behavioral health services are provided in collaboration with a member’s primary care provider.
 - e. Coordinate the transition of care and medical records, as specified in A.R.S. §§ 36-2986, 36-509, R9-31-512 and in contract, when a member transitions from:
 - i. A behavioral health provider to another behavioral health provider.
 - ii. A RBHA to another RBHA.
 - iii. A RBHA to a health plan.
 - iv. A health plan to a RBHA, or
 - v. A health plan to a health plan.
2. ADHS may contract with a Tribal Facility for the provision of behavioral health services for a Native American member. In the absence of a contract, a Native American member may:
 - a. Elect to receive behavioral health services from an IHS facility or a TRBHA, or
 - b. Be referred off-reservation to a RBHA for the provision of covered behavioral health services.

B. Health Plan responsibilities. A health plan shall:

1. Refer a member to a RBHA as specified in contract;
2. Provide inpatient emergency services as specified in R9-31-1205 for a member not yet enrolled with a RBHA;
3. Provide psychotropic medication services for a member, in consultation with the RBHA as needed, for behavioral health conditions that are within the primary care provider’s scope of practice; and
4. Coordinate the transition of care and medical records.

C. ADHS, its subcontractors and AHCCCS acute care health plans shall cooperate as specified in contract when a transition from 1 entity to another becomes necessary. For a Title XXI member, this transition shall include tracking and reporting of services used by a member toward the annual limitations prior to the transfer of care.

R9-31-1203. Eligibility for Covered Services

A. Eligibility for covered services. A member determined eligible according to A.R.S. § 36-2981 shall receive the medically necessary covered services specified in R9-31-1205.

B. Ineligibility. A person is not eligible for behavioral health services if a person is:

1. An inmate of a public institution as defined in 42 CFR 435.1009;
2. A resident of an institution for the treatment of tuberculosis; or
3. In an institution for the treatment of mental diseases at the time of application, or at the time of redetermination.

R9-31-1204. General Service Requirements

A. Services. Behavioral health services include both mental health and substance abuse services.

B. Medical necessity. A service shall be medically necessary as specified in R9-31-201.

C. Requirements. A service shall be consistent with R9-31-201 and R9-31-522.

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- D.** Prior authorization. A service shall be provided consistent with the prior authorization requirements established by the Director and specified in R9-31-210 and R9-31-1205.
- E.** Experimental services. An experimental service as determined by the Director, or a service provided primarily for the purpose of research, shall not be covered.
- F.** Gratuities. A service or item, if furnished gratuitously, are not covered and payment shall be denied.
- G.** Service area. Behavioral health services rendered to a member shall be provided within a member's service area except when:
 - 1. A primary care provider refers a member out of a health plan's area for medical specialty care,
 - 2. A covered service that is medically necessary for a member is not available within the service area,
 - 3. A net savings in behavioral health service delivery costs can be documented without requiring undue travel time or hardship for a member or a member's family, or
 - 4. A service is otherwise authorized based on practice patterns and cost or scope of service considerations.
- H.** Travel. When a member is traveling or temporarily residing out of a service area, covered services are restricted to emergency care, unless otherwise authorized by a member's RBHA.
- I.** Non-covered services. If a member requests the provision of a behavioral health service that is not covered by KidsCare or is not authorized by a RBHA, the service may be rendered to a member by an AHCCCS registered behavioral health service provider under the following conditions:
 - 1. A document that lists the requested services and the itemized cost of each is prepared and provided to a member or a guardian; and
 - 2. The signature of the member, or the member's guardian, is obtained in advance of service provision indicating that the services have been explained to the member or guardian and that the member or guardian accepts responsibility for payment.
- J.** Referral. If a member is referred out of a RBHA's service area to receive an authorized medically necessary behavioral health service for an extended period of time, all other behavioral health or medically necessary covered services for a member shall also be provided by a health plan or a RBHA during that time. Behavioral health services shall be provided with the limitations as specified in R9-31-1205.
- K.** Restrictions and limitations. The restrictions, limitations, and exclusions in this Article shall not apply to a health plan or a RBHA when electing to provide a non-covered service.
 - 1. The costs associated with providing any non-covered service to a member shall not be included in development or negotiation of capitation.
 - 2. Non-covered services shall be paid from administrative revenue or other funds, unrelated to Title XXI services.
- L.** Residential settings. Partial care, outpatient, emergency services and other behavioral health services may be covered when provided in this setting by providers who are licensed and qualified to do so. Room and board is not a covered service unless provided in an inpatient facility specified in R9-31-1205(B).

R9-31-1205. Scope of Behavioral Health Services

- A.** Covered services. The following behavioral health services shall be covered, subject to the limitations and exclusions in this Article.
- B.** Inpatient behavioral health services.
 - 1. Inpatient care shall include all behavioral health services, medical detoxification, accommodations and staffing, supplies and equipment. Services shall be provided under the direction of a physician in:
 - a. A general acute care hospital; or
 - b. An inpatient psychiatric facility for a person under 21 years of age, licensed as a psychiatric hospital or a residential treatment center licensed as a Level I Psychiatric Facility and accredited by an AHCCCS approved accrediting body as specified in contract and as authorized by federal law and regulations.
 - 2. Inpatient service limitations:
 - a. Inpatient services, other than emergency services specified in this Section, shall be prior authorized.
 - b. Services shall be reimbursed on a per diem basis and shall be inclusive of all services except, the following practitioners may bill independently for services and the services do not count toward the 30 day 30 visit annual limitation:
 - i. A psychiatrist,
 - ii. A certified psychiatric nurse practitioner,
 - iii. A physician assistant as defined in this Article, or
 - iv. A psychologist.
 - c. The following services may be billed independently when prescribed for a member residing in a residential treatment center as specified in R9-31-1205(B)(1)(b):
 - i. Laboratory,
 - ii. Radiology, and
 - iii. Psychotropic medications and medication monitoring and medication adjustment.

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- d. Title XXI funding for IMD inpatient services is available only to a member who is under 19 years of age. Title XXI funding shall not exceed 30 days inpatient care after an eligibility determination. A member cannot be in an IMD at the time of application or at the time of redetermination.
 - e. Inpatient services are limited to a maximum of 30 days per contract year.
- C. Partial care.**
- 1. Partial care shall be provided as either a basic or intensive level of care to meet a member's need for behavioral health treatment and prevent placement in a higher level of care or more restrictive environment.
 - a. Basic partial care services shall be provided by a behavioral health professional or a behavioral health technician under the direction of a psychiatrist, a psychologist, a certified psychiatric nurse practitioner or a physician assistant to prevent the need for a more structured environment.
 - b. Intensive partial care services shall be provided by a behavioral health professional or a behavioral health technician under the direction of a psychiatrist, a psychologist, a certified psychiatric nurse practitioner or a physician assistant as an alternative to inpatient care.
 - 2. Partial care service limitations and exclusions:
 - a. All services shall be included in the partial care reimbursement rate except, the following practitioners may bill independently:
 - i. A psychiatrist,
 - ii. A certified psychiatric nurse practitioner,
 - iii. A physician assistant as defined in this Article, and
 - iv. A psychologist.
 - b. Partial care services count toward the 30 day limitation during each contract year. Each full day of partial care, basic or intensive, counts as ½ day of inpatient care. Each ½ day of partial care, basic or intensive, counts as ¼ day of inpatient care.
 - c. Vocational activities, school attendance and educational hours shall not be included as a basic or intensive partial care service and shall not be billed simultaneously with these services.
- D. Outpatient services.**
- 1. Outpatient services shall include the following:
 - a. Screening once every 6 months provided by a behavioral health professional or a behavioral health technician;
 - b. Evaluation provided by a behavioral health professional;
 - c. Counseling including individual therapy, group and family therapy provided by a behavioral health professional, or a behavioral health technician under the clinical supervision of a behavioral health professional;
 - d. Behavior management provided by a behavioral health professional, a behavioral health technician or a behavioral health paraprofessional; and
 - e. Psychosocial rehabilitation provided by a behavioral health professional, a behavioral health technician or a behavioral health paraprofessional.
 - 2. Outpatient service limitations:
 - a. The following practitioners may bill independently:
 - i. A psychiatrist,
 - ii. A certified psychiatric nurse practitioner,
 - iii. A physician assistant as defined in this Article, and
 - iv. A psychologist.
 - b. Other behavioral health professionals, behavioral health technicians and behavioral health paraprofessionals shall be affiliated with, and services billed through, an AHCCCS registered behavioral health agency.
 - c. The total number of all outpatient services shall not exceed a maximum of 30 visits during each contract year. Screening performed once every 6 months shall not count toward the 30 visit maximum.
 - d. Each outpatient service except group therapy or group counseling shall count as 1 visit. Each group therapy or group counseling service shall count as ½ a visit.
- E. Behavioral health emergency services.**
- 1. A RBHA shall ensure that behavioral health emergency services are provided by qualified personnel as specified in R9-31-1206 and are available 24 hours-per-day, 7 days-per-week in the RBHA service area in emergency situations where a member is a danger to self or others or is otherwise determined to be in need of immediate unscheduled behavioral health services. Behavioral health emergency services may be provided on either an inpatient or outpatient basis.
 - 2. A health plan shall provide behavioral health emergency services on an inpatient basis not to exceed 3 days per emergency episode and 12 days per contract year, for a member not yet enrolled with a RBHA.
 - 3. A provider of inpatient emergency services shall verify the eligibility and enrollment status for a member through the Administration to determine the need for notification to a health plan or a RBHA and to determine the party responsible for payment of services as specified in 9 A.A.C. 31, Article 7.
 - 4. Behavioral health emergency service limitations:

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- a. An emergency behavioral health service does not require prior authorization but providers must comply with the notification requirements as specified in R9-31-210.
 - b. A service for an unrelated condition, requiring additional diagnostic and treatment procedures, requires additional prior authorization from a RBHA.
 - c. Inpatient service limitations specified in subsection (B) of this Section shall apply to emergency services provided on an inpatient basis.
 - d. Emergency/crisis behavioral health services provided on an outpatient basis by a psychiatrist, a certified psychiatric nurse practitioner, a physician assistant or a psychologist, shall not count toward the outpatient service limitations specified in this Section.
- F.** Other behavioral health services. The following services are covered but are not included in the visit limitations:
- 1. Case management to support and enhance treatment compliance and effectiveness;
 - 2. Laboratory and radiology services for behavioral health diagnosis and medication management;
 - 3. Psychotropic medications and related medications included in a health plan or a RBHA's formulary; and
 - 4. Medication monitoring, administration and adjustment for psychotropic medications and related medications.
- G.** Transportation services.
- 1. Emergency transportation shall be covered for a behavioral health emergency as specified in R9-31-211. Emergency transportation shall be limited to behavioral health emergency situations specified in R9-31-1205(E).
 - 2. Non-emergency transportation for a behavioral health service is excluded.

R9-31-1206. General Provisions and Standards for Service Providers

- A.** Qualified service provider standards. A qualified behavioral health service provider shall, at a minimum:
- 1. Be employed by, or contracted in writing with, either a RBHA or a health plan to provide behavioral health services to a member;
 - 2. Have all applicable state licenses or certifications, or comply with alternative requirements established by the Administration;
 - 3. Register with the Administration as a service provider; and
 - 4. Comply with all applicable criteria under 9 A.A.C. 31, Article 5, and this Article.
- B.** Quality and Utilization management.
- 1. Service providers shall cooperate with quality and utilization management programs of a RBHA, a health plan, ADHS and the Administration as specified in R9-31-522 and contract.
 - 2. Service providers shall comply with applicable procedures as specified in 42 CFR 456 as of August 23, 1996, which is incorporated by reference and on file with the Administration and the Office of the Secretary of State. This incorporation by reference contains no future editions or amendments.

R9-31-1207. Standards for Payments

- A.** Payment to ADHS. ADHS shall receive a monthly capitation payment, based on the number of Title XXI members at the beginning of each month, according to standards established by the Administration. Administrative costs shall be incorporated into the capitation payment.
- B.** Claims submissions. Claims submissions include:
- 1. A contracted service provider shall submit a clean claim to ADHS or its designated representative, as specified in the ADHS contract with the Administration.
 - 2. A claim for emergency inpatient services for a member not yet enrolled with a RBHA shall be submitted to a health plan and shall comply with the time-frames and other applicable procedures in 9 A.A.C. 31, Article 7.
- C.** Prior authorization. Payment for services or items requiring prior authorization may be denied if prior authorization was not obtained as specified in R9-31-210.

R9-31-1208. Grievance and Appeal Process

- A.** Processing of a grievance. All grievances relating to any adverse action, decision, or policy regarding behavioral health issues shall be processed according to A.R.S. §§ 36-2986, 41-1092.02 and 9 A.A.C. 31, Article 8 and 9 A.A.C. 31, Article 13.
- B.** Member appeal. A member's appeal of a grievance decision under this Article shall be conducted as a contested case according to 9 A.A.C. 31, Article 8.
- C.** Other appeals. An appeal of a DHS director's decision following an Office of Administrative Hearing decision other than de novo hearing requests by a member shall be limited to an appellate review by the Administration to determine whether substantial evidence in the record supports the decision.

NOTICE OF PROPOSED RULEMAKING

TITLE 13. PUBLIC SAFETY

CHAPTER 5. LAW ENFORCEMENT MERIT SYSTEM COUNCIL

PREAMBLE

<u>1. Sections Affected</u>	<u>Rulemaking Action</u>
R13-5-101	New Section
R13-5-102	New Section
R13-5-103	New Section
R13-5-104	New Section
Article 2	New Article
R13-5-201	New Section
R13-5-202	New Section
R13-5-203	New Section
R13-5-204	New Section
Article 3	New Article
R13-5-301	New Section
R13-5-302	New Section
R13-5-303	New Section
R13-5-304	New Section
R13-5-305	New Section
R13-5-306	New Section
R13-5-307	New Section
R13-5-308	New Section
R13-5-309	New Section
R13-5-310	New Section
R13-5-311	New Section
R13-5-312	New Section
R13-5-313	New Section
R13-5-314	New Section
R13-5-315	New Section
R13-5-316	New Section
R13-5-317	New Section
Article 4	New Article
R13-5-401	New Section
R13-5-402	New Section
R13-5-403	New Section
Article 5	New Article
R13-5-501	New Section
R13-5-502	New Section
R13-5-503	New Section
R13-5-504	New Section
R13-5-505	New Section
R13-5-506	New Section
R13-5-507	New Section
R13-5-508	New Section
R13-5-509	New Section
R13-5-510	New Section
R13-5-511	New Section
R13-5-512	New Section
R13-5-513	New Section
Article 6	New Article
R13-5-601	New Section
R13-5-602	New Section
Article 7	New Article
R13-5-701	New Section
R13-5-702	New Section

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R13-5-703	New Section
R13-5-704	New Section
R13-5-705	New Section
Article 8	New Article
R13-5-801	New Section
R13-5-802	New Section
R13-5-803	New Section
R13-5-804	New Section

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

Authorizing statute: A.R.S. § 41-1830.12(A)

Implementing statutes: A.R.S. §§ 41-382(19)(a), 41-1714, 41-1830.11, 41-1830.14, and 41-1830.12, 41-1830.13, and 41-1830.14.

3. A list of all previous notices appearing in the Register addressing the proposed rule:

Notice of Rulemaking Docket Opening: 3 A.A.R. 2932, October 17, 1997.

4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:

Name: Capt. C. H. Johnston, Business Manager

Address: Law Enforcement Merit System Council
P.O. Box 6638
Phoenix, Arizona 85005-6638

Telephone: (602) 223-2286

Fax: (602) 223-2096

5. An explanation of the rules, including the agency's reasons for initiating the rules:

The Law Enforcement Merit System Council (Council) is proposing to repeal its present rules and concurrently replace the old rules with new rules. The present rules were adopted in 1968 and have undergone minor revisions since then, but they are outdated and difficult to administer. As agreed during the 5-year review of these rules, the Council proposes to adopt new rules conforming to contemporary rulemaking policies, format, and style. The new rules will incorporate applicable federal regulations and some of the Council's past interpretations of the rules. The new rules will establish a comprehensive personnel system that can be applied to any agency brought under the purview of the Law Enforcement Merit System Council

6. A reference to any study that the agency proposes to rely on in its evaluation of or justification for the proposed rule and where the public may obtain or review the study, all data underlying each study, any analysis of the study and other supporting material:

Not applicable.

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

Not applicable.

8. The preliminary summary of the economic, small business, and consumer impact:

Repeal of the Council's outdated administrative rules and adoption of revised administrative rules will result in additional costs to the Department of Public Safety due to the increase in annual leave benefits and in allowing the retention of accrued sick leave upon transfer from another state agency. The change in the retention of accrued sick leave benefits will bring the Department of Public Safety in line with the current rules of the Department of Administration, State Personnel Division. This will enhance the Department's ability to recruit qualified candidates who have previous state service. The rules will not apply to small businesses or consumers, but will apply to agency employees and applicants for employment. Revisions to the rules will improve readability and make the rules easier to use.

9. 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: Capt. C.H. Johnston, Business Manager

Address: Law Enforcement Merit System Council
P.O. Box 6638
Phoenix, Arizona 85005-6638

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Telephone: (602) 223-2286

Fax: (602) 223-2096

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

Following submission to the Secretary of State and the rules being published in the *Arizona Administrative Register*, written comments will be received at the address listed in item #9. A public hearing is scheduled for September 22, 1999, at the Department of Public Safety, 2nd Floor Conference Room, 2102 W. Encanto Boulevard. This meeting will begin at 10 a.m.

Persons with a disability may request a reasonable accommodation, such as a sign language interpreter, by contacting Capt. Coy Johnston, Law Enforcement Merit System Council, voice telephone number (602) 223-2286, or P.O. Box 6638, Phoenix, Arizona 85005, or TDD number if appropriate. Requests should be made as early as possible to allow time to arrange the accommodation.

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:

Fair Labor Standards Act, 29 U.S.C.201.

R13-5-101 (37), (39), (54); R13-5-201 (A)(40); R13-5-203 (e)

Family and Medical Leave Act of 1993, 29 CFR Part 825, et seq.

R13-5-101 (40); R13-5-513 (K)

13. The full text of the rules follows:

TITLE 13. PUBLIC SAFETY

CHAPTER 5. LAW ENFORCEMENT MERIT SYSTEM COUNCIL

ARTICLE 1. GENERAL PROVISIONS

Sections

R13-5-101. Definitions

R13-5-102. Law Enforcement Merit System Council

R13-5-103. Personnel Administration

R13-5-104. General Information

ARTICLE 2. CLASSIFICATION AND COMPENSATION

Sections

R13-5-201. Classification

R13-5-202. Compensation

R13-5-203. Pay Administration

R13-5-204. Work Hours and Work Options

ARTICLE 3. EMPLOYMENT

Sections

R13-5-301. Recruitment

R13-5-302. Examinations

R13-5-303. Applicant Preference Points

R13-5-304. Employment

R13-5-305. Promotion

R13-5-306. Reassignment

R13-5-307. Reinstatement

R13-5-308. Hiring Preference

R13-5-309. Selection

R13-5-310. Pre-employment Processing

R13-5-311. Appointments

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- R13-5-312. Limited Term Appointments
- R13-5-313. Provisional Appointments
- R13-5-314. Intermittent Appointments
- R13-5-315. Employee Conduct
- R13-5-316. Probation
- R13-5-317. Performance Evaluations

ARTICLE 4. ASSIGNMENTS

Sections

- R13-5-401. Special Duty Assignments
- R13-5-402. Uncovered Appointments
- R13-5-403. Transfer of External Functions

ARTICLE 5. EMPLOYEE LEAVE

Sections

- R13-5-501. Employee Leave Guidelines
- R13-5-502. Administrative Leave
- R13-5-503. Annual Leave
- R13-5-504. Civic Duty Leave
- R13-5-505. Compensatory Leave
- R13-5-506. Donated Annual Leave
- R13-5-507. Holiday Leave
- R13-5-508. Industrial Leave
- R13-5-509. Leave Amortization
- R13-5-510. Leave Without Pay
- R13-5-511. Military Leave of Absence
- R13-5-512. Recognition Leave
- R13-5-513. Sick Leave

ARTICLE 6. GRIEVANCES

Sections

- R13-5-601. Agency Grievance System
- R13-5-602. Council Review

ARTICLE 7. DISCIPLINE AND APPEALS

Sections

- R13-5-701. Causes for Discipline
- R13-5-702. Disciplinary Procedures
- R13-5-703. Appeals to the Council
- R13-5-704. Rehearing of Council Decisions
- R13-5-705. Time Limits

ARTICLE 8. SEPARATION FROM EMPLOYMENT

Sections

- R13-5-801. Resignation or Retirement
- R13-5-802. Reduction-in-Force
- R13-5-803. Disability
- R13-5-804. Public Safety Retirement System Eligibility

ARTICLE 1. GENERAL PROVISIONS

R13-5-101. Definitions

In this Chapter, unless otherwise specified, the following terms mean:

1. “Abandonment of position” means failure of an employee to report to work for a period of 5 consecutive working days without authorization from the employee’s supervisor or manager and without good cause.
2. “Abilities” means a general trait or capability an individual possess when beginning the performance of a task.
3. “Agency” means any governmental organization subject to the rules of the Law Enforcement Merit System Council.
4. “Agency head” means the chief executive officer of any agency placed under the rules of the Law Enforcement Merit System Council

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5. "Allocate or allocation" means the placement of a position to a classification based on the duties and responsibilities of the position.
6. "Annual leave" means the leave time accrued monthly by an employee based on the number of years of state service and may include holiday leave and recognition leave.
7. "Appeal" means an employee's request for Council review of a disciplinary action.
8. "Applicant" means a person who has applied for an opportunity to compete for a position.
9. "Appointment" means the placement of a candidate or employee into a classified position.
10. "Background investigation" means an inquiry to determine the character of a potential employee and may include verification and review of identity, education, employment history, personal references, credit rating, criminal history, driving record, and civil standing.
11. "Break-in-service" means a period of absence from agency service of more than 30 consecutive working days resulting from an employee's resignation, retirement, suspension, layoff, or leave of absence without pay.
12. "Business Manager" means the individual responsible for administering the affairs of the Council.
13. "Candidate" means an applicant who qualifies for a place on an eligibility list.
14. "Certified list" means the names of qualified candidates on an eligibility list who are willing to accept an appointment.
15. "Civilian employee" means a person who is appointed to a classification that does not require peace officer status.
16. "Classification" means 1 or more positions requiring the same minimum qualifications, knowledge, skills, and abilities, that have the same title and pay range.
17. "Classification date" means the effective date of an employee's appointment to a classification.
18. "Classification specification" means the classification's title or rank, classification code, typical duties and responsibilities, essential functions, minimum qualifications, required knowledge, skills and abilities.
19. "Classified position" means a position that is allocated to a classification.
20. "Commissioned employee" means a person who is appointed to a classification that requires officer status as defined in A.R.S. § 41-1822(A)(3).
21. "Compensation" means the amount of money paid for each hour worked and includes time off received instead of money for overtime and holidays worked.
22. "Compensatory time" means leave received instead of money for overtime worked.
23. "Competitor" means an applicant who has met the minimum qualifications for a classification and is competing in an employment or promotional examination.
24. "Contested case" means cases that fall within the definition in A.R.S. § 41-1001(4).
25. "Council" means the Arizona Law Enforcement Merit System Council.
26. "Covered position" means any position within an agency that is not appointed by the Governor or by the agency head with the concurrence of the Governor and is subject to the rules of the Council.
27. "Days" mean full calendar days unless otherwise specified in the text of a rule.
28. "Demotion" means the disciplinary appointment of an employee to a classification with a lower pay range.
29. "Disabled person" means anyone who has a physical or mental impairment that substantially limits 1 or more main life activities, or who has a record of impairment, or is regarded as having such impairment.
30. "Dismissal" means an agency-initiated removal of an employee from state service.
31. "Duties" means an action or task required by an employee's position or classification.
32. "Eligibility list" means the names of candidates for a classification presented in descending order of their final scores in preparation for a selection process.
33. "Employee" means a person who is appointed to a position, subject to the terms and conditions of the appointment.
34. "Entrance rate" means the lowest rate of pay within the pay range of a classification.
35. "Examination" means an evaluation or test to determine if an applicant's qualifications comply with the specifications for a classification.
36. "Examination plan" means a plan for the examination and shall include a description of each phase of the examination, the weight applied to each phase of the examination, the criteria for moving from 1 phase of the examination to another, and whether the length the eligibility list will be limited to a specific number of names
37. "Exempt employee" means an employee who is not subject to the overtime provisions of the Fair Labor Standards Act, Title 29 U.S.C Chapter 8.
38. "External employment list" means an eligibility list of candidates seeking employment with an agency.
39. "Fair Labor Standards Act" means those federal statutes at Title 29 USC Chapter 8.
40. "FMLA leave" means a medical leave of absence, with or without pay, taken by an eligible employee under a policy adopted by an agency head from options authorized in the federal regulations for the Family and Medical Leave Act, 29 U.S.C. § 2611, et. seq.
41. "For cause" means any improper behavior, unacceptable performance, or violation of Council rules that leads to disciplinary action or dismissal.
42. "Full-time employee" means an employee appointed to work 40 hours a week.

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43. “Grievance” means a work-related complaint by an employee, regarding classification, compensation, performance evaluation, or violation of law or Council rules.
44. “Holiday leave” means the leave time accrued by an employee due to working a state holiday. Holiday leave may be included in annual leave time.
45. “Human Resources” means an agency department responsible for personnel administration.
46. “Initial probation” means a probationary period required of a new employee to an agency.
47. “Intermittent Appointment” means the appointment of an employee to work on an irregular basis.
48. “Internal list” means an eligibility list of internal candidates seeking promotional positions or reassignments.
49. “Knowledge” means a body of information, usually of a factual or procedural nature, that makes for successful performance of a task.
50. “Limited duty” means a short-term assignment to a physically less demanding position while the employee recovers from a temporary medical condition or disability.
51. “Limited-term appointment” means an appointment to a position that is designated as temporary or is not funded by the agency’s legislative appropriation.
52. “Limited-term employee” means an employee in a limited-term appointment who has not achieved the status of a regular employee.
53. “Manifest error” means an erroneous act or failure to act in administering the provisions of Article 3 of this Chapter.
54. “Non-exempt employee” means an employee who is subject to the overtime provisions of the Fair Labor Standards Act, Title 29 U.S.C Chapter 8.
55. “Overtime” means time worked by a non-exempt employee in excess of 40 hours in a workweek or in excess of 160 hours in a 28-day cycle. Overtime may include time worked when required to return to work from annual leave.
56. “Pay range” means the difference between the lowest and highest pay rates for a classification.
57. “Pay status” means an employee’s right to receive compensation for time worked or leave taken, except when absent on leave-without-pay or suspension without pay.
58. “Permanent employee” means an employee who has successfully completed an initial probation with an agency.
59. “Permanent status” means the employment rights achieved after satisfactorily completing the probationary period for the classification.
60. “Position” means a job or function, whether occupied or vacant, that is assigned a number, classification, funding source, pay range, and location code.
61. “Position audit” means an examination of the duties and responsibilities of a position to determine the appropriate classification.
62. “Probation” means a period of 12 months established for evaluating an employee’s performance to determine if the employee should be retained in a classification.
63. “Promotion” means the appointment of an employee to a position in another classification with a higher pay at the maximum level.
64. “Provisional appointment” means an employee who is appointed without being on an eligibility list and who serves until an eligibility list can be established for the position.
65. “Qualifications Appraisal Board” means a group of raters who evaluate a competitor’s qualifications based upon the competitor’s written or oral responses.
66. “Qualifying service” means part-time or full-time service as an employee of an agency, excluding any break-in-service.
67. “Reallocation” means a change in the classification of a position, based upon an analysis of the duties and responsibilities of the position.
68. “Reappointment” means appointment to a classification previously held by a permanent status employee who was reassigned to a different classification during a reduction in force.
69. “Reassignment” means an appointment, at the employee’s request, to a position in a different classification with the same or a lower pay range.
70. “Recall” means the appointment of a former employee who was separated by a reduction in force.
71. “Reclassification” means the change in classification of an employee due to the employee’s movement to a position in a different classification or a reallocation of the employee’s position to a different classification.
72. “Recognition leave” means leave time given an employee under a formal awards program as an incentive for continued superior performance. Recognition leave is added to annual leave.
73. “Reduction in force” means an action taken by an agency head to involuntary transfer, reassign, or lay-off an employee as a result of a:
 - a. Legislative or executive mandate;
 - b. Reduction of funds; or
 - c. Decrease in the number of authorized positions, service area, or program responsibilities.
74. “Regular employee” means an employee, except a limited term-employee, who achieves permanent status.

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- 75. “Reinstatement” means an appointment of a former employee to the classification or a similar classification held when the employee separated from the agency.
- 76. “Rejection of probation” means an action taken by an agency head to reassign an employee on a promotional probation or to separate an employee on an initial probation for failure to achieve and sustain the required level of performance for the classification.
- 77. “Responsibilities” means the accountability for an action or task performed by an employee in a position or classification.
- 78. “Retirement” means a voluntary separation from the agency by an employee who is eligible to participate in a retirement plan.
- 79. “Separation” means the close of an employee's term of employment with an agency.
- 80. “Skills” means an individual’s level of proficiency or competency in performing a specific task.
- 81. “Special duty assignment” means an employee’s temporary assignment of more responsibilities or duties or an assignment to a position with special work or living requirements.
- 82. “State” means the State of Arizona.
- 83. “Standard performance” means a rating given to an employee who meets the expected level of performance needed to accomplish the objectives of a position.
- 84. “Standardized scoring” means a statistical method used to ensure that the various components of a multi-phased examination receive their proper weights.
- 85. “Suspension of pay” means the disciplinary action of withholding an employee's pay for a specified period.
- 86. “Telecommuting” means working from a site away from the office by using a telephone or a telephone connection to operate a computer and to carry on the function of the job.
- 87. “Transfer” means the movement of an employee from the employee’s current position to another position in the same classification.
- 88. “Uncovered appointment” means an appointment to a job or function by the Governor of the State of Arizona or by an agency head with the concurrence of the Governor.
- 89. “Uncovered employee” means an employee who serves at the pleasure of the Governor of the State of Arizona.
- 90. “Veteran” means an individual who served in the armed forces of the United States and was discharged from military service under honorable conditions after more than 6 month's of active duty and as defined in 37 U.S.C.A. § 101 and A.R.S. § 38-492
- 91. “Workweek” means a 40-hour time period an employee is assigned to work between Saturday and Friday, including actual time worked and any leave time taken.

R13-5-102. Law Enforcement Merit System Council

- A. Authority.** The statutory authority of the Law Enforcement Merit System Council is found in A.R.S. §§ 41-1830.11 through 41-1830.15.
- B. Decisions of the Business Manager** are subject to review by the Council.
- C. Election of Officers.** The Council shall elect a Chair and Vice-Chair from its members at a regular meeting in November or December of even-numbered years. The Chair and Vice-Chair shall hold office for a period of 2 years, or until their successors are elected.
- D. Meetings.** The Chair, or in the Chair's absence the Vice-Chair, shall call a meeting of the Council when a meeting is needed. The Council shall hold meetings at convenient locations whenever possible. Except for the Council's executive sessions, the Council’s meetings shall remain open to the public and the Chair shall give interested parties an opportunity to be heard.
- E. Quorum.** Two members are required for a quorum, and concurring members must equal a majority of those voting in order to take action.
- F. Minutes.** The Council shall keep minutes of its proceedings and official actions. The Council's records and minutes are open to public review during normal business hours.
- G. Council rules.** The Council's rules shall apply to all employees in any agency under the Council's rules. All employees shall receive a copy of the Council's rules.

R13-5-103. Personnel Administration

- A. Separation of powers.** The agency head shall staff and maintain a human resources function responsible for personnel administration consistent with these rules and under the jurisdiction of the Council as provided for in statute and this chapter. The Business Manager shall provide oversight to Human Resources in administering this chapter.
- B. Personnel records.** Human Resources shall maintain employment records on each agency employee, including the employee’s:
 - 1. Employment application;
 - 2. Examination scores;
 - 3. Signed oath of office;

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4. Date of initial appointment;
 5. Other appointment orders;
 6. Performance reports;
 7. Transfers;
 8. Commendations;
 9. Leaves-of-absence without pay;
 10. Disciplinary actions;
 11. Separation from the agency;
 12. Reinstatement to the agency, and
 13. Any other appropriate employment records.
- C.** Confidentiality. Human Resources shall preserve the confidentiality of personnel records. Persons authorized to access personnel records are:
1. The employee;
 2. Persons authorized by the employee;
 3. Persons with official court orders;
 4. Persons authorized by the agency head;
 5. Persons authorized by the chair of the Council; and
 6. Law enforcement agencies authorized to have access to such records under A.R.S. § 41-1828.01.

R13-5-104. General Information

- A.** Delegating authority. The agency head may delegate to other agency personnel the authority and duties imposed by this chapter upon the agency head, unless otherwise prohibited by statute or rule.
- B.** Reports. The agency head shall provide information requested by the Council on matters relating to this chapter. The agency shall present the information in the format requested by the Council.
- C.** Restricted information. The Council shall safeguard confidential information given to the Council by any employee or former employee. The Council shall not allow inspection of such information except under conditions prescribed by the Council.
- D.** Service of notice. Except for a subpoena, the agency or the Council shall serve notice upon an employee personally or by the U.S. Postal Service. Postal service shall be made by certified mail, return receipt requested, to an employee's last known home or business address and is complete upon mailing. Service as provided for in this Section is required for the following:
1. Notice of an employee's rejection from probation;
 2. Notice of charges in a disciplinary proceeding;
 3. Notice of an employee's suspension, layoff, or dismissal; and
 4. Other notices required by these rules.
- E.** Proof of service. The agency shall provide proof of service by affidavit.
- F.** Availability of funds. Reference in these rules to employee pay is contingent upon availability of funds, as determined by the agency head.
- G.** Compliance with federal rules and regulations. Any federal regulation or standard governing the granting of federal funds to an agency under the Law Enforcement Merit System Council takes precedence over any of these rules which conflict with the control and expenditure of federal funds.
- H.** Validity and separation. If any provision or application of the rules in this chapter is held invalid by a court of competent jurisdiction, the remainder of the rules in this chapter and their application to other persons or circumstances are not affected by the court decision.
- I.** Equal employment. The Council, the agency head, and agency employees shall not discriminate in any aspect of employment on the basis of race, color, religion, sex, national origin, age, or disability.
- J.** Accommodation. The Council and the agency head shall make reasonable accommodations to enable persons with disabilities to use agency facilities, services, and programs. A person requesting accommodation shall notify the agency or the Business Manager as soon as reasonably possible in order to allow the agency time to arrange the accommodation.

ARTICLE 2. CLASSIFICATION AND COMPENSATION

R13-5-201. Classification

- A.** Classification Plan. The Council shall adopt and revise classifications of positions for use by an agency. Collectively, classifications adopted by the Council comprise the classification plan of the Council. Each classification in the classification plan includes:
1. A descriptive title;
 2. A description of the scope of duties, typical responsibilities, and essential functions;
 3. The minimum qualifications required of an applicant; and
 4. A determination of non-exempt or exempt status under the Fair Labor Standards Act.

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- B.** Classification Specifications. The Business Manager shall document the date of adoption and the latest revision of each classification specification, and shall maintain the master set of all approved classification specifications. Human Resources shall also maintain a set of all approved classification specifications. Copies of a classification specification are open for inspection by an employee and the public during normal business hours.
- C.** Allocating positions. The Council shall allocate positions to appropriate classifications in the Classification Plan. The Council shall allocate positions to the same classification when:
 - 1. Their duties and responsibilities are substantially similar;
 - 2. Substantially the same education, experience, knowledge, skills, and abilities are required;
 - 3. Substantially the same examinations are used in choosing qualified candidates; and
 - 4. The same pay range may equitably be applied to all positions in the classification.
- D.** Compensation Maintenance Review Plan: The Council shall adopt and revise guidelines for a classification and compensation maintenance review plan. Employees shall be placed in classifications in accordance with this plan.
- E.** Assignment. Except in an emergency, or as otherwise provided by this chapter, an agency shall not assign an employee to perform the duties of any classification other than the classification to which their position is allocated.
- F.** Modification. The Council may establish new classifications and revise or abolish existing classifications. The Council shall decide when positions in an affected classification need to be reallocated, taking into account the classification duties, responsibilities and related criteria. The Council shall also determine the probationary or permanent status of an employee affected by any reallocation.
- G.** Reviewing allocations. An employee affected by the reallocation of the employee's positions shall have the opportunity to be heard by the Council under R13-5-602.
- H.** Changes in positions. The Business Manager shall reallocate an existing position when a material and permanent change occurs in the duties and responsibilities of the position.
 - 1. If an employee is in a position that is reallocated, an agency shall reclassify the employee in that position if the employee:
 - a. Has been in the position at least 6 months;
 - b. Has occupied the position during the change in duties; and
 - c. Meets the minimum qualifications of the new classification.
 - 2. A position shall not be reallocated while undergoing a classification and compensation review, except that the Council may reallocate a position that is undergoing a classification and compensation review when an agency head can show that the reallocation is necessary for the continued operation of the agency.
- I.** New positions. An agency head shall establish positions in the agency as authorized by law, subject to budgetary authorization and availability of funds. An agency head shall notify the Council when a new position is established. The Council shall allocate all new positions to the appropriate classification.
- J.** Classification titles. An agency shall use a classification title approved by the Council in all communications regarding personnel, budget, and financial records.

R13-5-202. Compensation

- A.** Compensation plan. The Council shall adopt compensation levels for all classifications. Collectively, compensation levels adopted by the Council comprise the compensation plan of the Council. An agency shall periodically revise the compensation plan for covered positions, based on the principle that like salaries are paid for comparable duties and responsibilities and shall submit the agency's recommendations to the Council for approval.
- B.** Hearings. If an agency recommends a change in a pay range, the Council shall grant any adversely affected employee an opportunity to be heard.
- C.** Pay Levels. The Council shall specify all pay levels. The Council may also establish more than 1 pay range, hourly rate, or method of compensation for classifications and positions with unusual hours, conditions of work, or when necessary to compete with other employers.
- D.** Lack of Funds. If an agency lacks sufficient funds to pay an employee's salary, the agency shall consider the alternative methods of reducing costs, including those described in R13-5-802(B). If an alternative method is not adequate or available, the agency shall assign an employee to a leave of absence without pay under the layoff procedure in R13-5-802. The agency shall recall the laid off employees when sufficient funds become available.
- E.** Entrance rate. The minimum pay rate for each classification is the entry rate, unless otherwise provided in these rules. The agency shall maintain a record of each employee's employment date and entrance into a classification.
- F.** Special pay adjustments. When making an appointment, promotion, reinstatement, recall, transfer, reclassification or reassignment, an agency head may authorize pay anywhere within the pay range to meet recruiting and retention needs, and to give credit for prior agency service.
- G.** Rate above maximum. When a position is reallocated resulting in the reclassification of an employee to a lower classification or the pay range of a classification is reduced, the agency head may authorize a pay rate for the employee above the maximum for the classification. While an employee's pay remains above the maximum rate for the employee's classification, the employee shall not receive any pay increases except those required by law.

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- H. Rate on movement to a classification with a lower pay range. An employee who accepts reassignment to a classification with a lower pay range may receive a rate above the minimum, if authorized by the agency head. The agency shall then establish a new classification date for the employee.
- I. Rate on movement to a classification with the same range. When an employee moves to another classification with the same range, the employee shall retain the employee's current rate of pay.
- J. Rate on movement to a classification with a higher pay range. When an employee moves to another classification with a higher pay range, the employee shall receive pay at the entry level of the new classification. If the employee's current pay is greater than the entry level of the new classification, the employee shall receive no less than a \$500 annual increase. In no case shall an employee's salary exceed the maximum for the new classification.
- K. Rate upon reinstatement. Upon reinstatement, a former employee shall receive the entrance rate for the employee's classification, unless the agency head authorizes a higher rate or as directed by the Council following a disciplinary hearing.
- L. Rate upon recall. A former employee who is recalled after a layoff shall receive the same pay rate as that held before the layoff. If the Council approved a general pay adjustment or classification adjustment while the employee was on leave of absence without pay, the employee shall receive the adjustment.
- M. Automatic pay adjustment. A classification pay range adjustment applies equally to all employees within the classification and does not alter an employee's classification date for pay adjustments.

R13-5-203. Pay Administration

- A. Base pay adjustments. An agency head may modify base pay by adding cost-of-living and other adjustments appropriated by the State Legislature. An agency head may also request that the Council revise the compensation plan to include other changes to base pay, as needed. After base pay adjustments are completed, an agency head may add special duty pay before computing an employee's pay rate.
- B. Appropriated pay adjustments. Upon approval by the Council the agency head may apply some or all the appropriated funds to the compensation plan, if the appropriation bill does not include specific allocation instructions for employee pay raises, or if the instructions are not applicable to the agency.
- C. Special duty assignments. An agency head may supplement the base pay of an employee on a special duty assignment. Time spent on a special duty assignment counts toward an employee's length of service. An employee may receive special duty pay only for the period when the employee performs the required duties of the special duty assignment.
- D. Return from special duty assignment or uncovered appointment. When an employee returns to a regular appointment from a special duty assignment or an uncovered appointment, the agency shall return the employee's pay to the employee's base pay earned before being assigned to a special duty assignment or uncovered appointment. If general pay adjustments or classification adjustments are approved while an employee is on a special duty assignment or serving in an uncovered appointment, the employee shall receive the adjustments.
- E. Overtime pay. The agency head shall adopt an overtime policy and procedure consistent with federal regulations under the Fair Labor Standards Act, Arizona Revised Statutes, and this Chapter. Compensatory leave is accrued and used as provided by R13-5-505.

R13-5-204. Work Hours and Work Options

Work hours and work breaks. An agency head may establish different working hours for certain work groups and shifts in order to meet the needs of the agency. In doing this, the agency head should consider such factors as clean air directives, telecommuting, and flexible work hours. An agency head shall establish a policy for "on-duty" and "off-duty" time and provide procedures for recording time worked and leave taken by an employee.

ARTICLE 3. EMPLOYMENT

R13-5-301. Recruitment

- A. Recruiting an external applicant. When authorized by an agency head, Human Resources shall seek qualified applicants through open recruiting and competitive employment opportunities. Human Resources shall publish and distribute job announcements that include:
 1. The classification title and pay;
 2. The minimum qualifications;
 3. The location of the assignment, if known;
 4. Special requirements, if any;
 5. Where application forms may be obtained; and
 6. The application filing deadline.
- B. Applications. Human Resources shall establish procedures for distributing and receiving applications. Human Resources shall screen all applications and may reject any that are incomplete, illegible, or received after the deadline.
- C. Disqualifying an applicant or candidate. An agency head or the agency's Human Resources unit may disqualify any applicant or candidate based upon information in an application, statements made by the applicant's references, and a background investigation by the agency. The agency shall also disqualify any applicant who:

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1. Lacks the required qualifications for the classification;
 2. Was convicted of a disqualifying offense;
 3. Was dismissed by a previous employer for a reason that is cause for dismissal from the agency;
 4. Practiced deception or failed to give complete and accurate information; or
 5. Failed to meet selection guidelines as established by the Council.
- D.** Reapplying. A candidate who fails any portion of the background investigation, with the exception of medical only, shall be precluded from reapplying for a period of 2 years from the date of disqualification.
- E.** Notifying an applicant. After completing a qualification review, Human Resources shall notify an applicant of the agency's acceptance or rejection of the employee's application.
- F.** Retaining an application. Human Resources shall retain all applications under a records retention and disposition schedule approved by the Department of Library, Archives and Public Records.

R13-5-302. Examinations

- A.** Examination plan. Human Resources shall develop an examination plan for each selection process. The Business Manager shall review and approve each examination plan. Applicants for the examination shall be notified of the examination plan. Once an examination begins, changes will not be made to the plan. If an examination plan needs to be altered, Human Resources shall terminate the current examination and initiate a new examination.
- B.** Examination guidelines. Human Resources shall obtain or develop a valid examination for each classification, and establish a weight and minimum qualifying requirement for each phase of the exam. The Business Manager shall review and approve each examination before the examination is administered. A competitor shall achieve the minimum requirements on each phase of an examination before progressing to the next phase. A competitor shall achieve a passing score on each phase before qualifying for a classification.
- C.** Notifying an applicant. Human Resources shall notify a qualified applicant of the following information:
1. The date, time, and location of each examination;
 2. The number of phases included in the examination;
 3. Other pre-employment requirements; and
 4. How to request special accommodations for persons with disabilities.
- D.** Type and content of examination. Human Resources shall ensure that each examination is valid, non-discriminatory, and fairly and accurately measures an applicant's ability to perform the functions and duties listed in the classification specifications.
- E.** Conducting an examination.
1. Human Resources, or a person designated by Human Resources, shall administer all examinations.
 2. The Business Manager shall oversee all elements of, but not actively participate in, the examination process to ensure that each component is administered, scored, evaluated, and interpreted fairly and accurately.
 3. Human Resources shall permanently disqualify an applicant from taking any employment or promotional examination if it has been established that the applicant is guilty of copying, collusion, unauthorized access, or other acts of dishonesty relating to an official examination.
- F.** Scoring an examination. Human Resources shall oversee the scoring of all examinations.
1. Human Resources may use a rater from within or outside of an agency to score an examination. Human Resources shall select an examination rater who is qualified to appraise the education, experience, and personal qualifications of a competitor.
 2. Human Resources shall provide a rater with scoring guidelines and exam answer keys to ensure consistency of scoring, evaluation, and interpretation of test results. All phases of an examination shall have predetermined and clearly defined scoring criteria.
 3. If a member of a qualifications appraisal board gives a competitor an average rating below the passing level, but a majority of the members give the competitor a passing score, the competitor shall receive a minimum rating of "pass". If a majority of the qualifications appraisal board gives the competitor a score below the passing level, the competitor shall be disqualified, even if the competitor's average score is above the passing level.
 4. Human Resources shall apply standardized scoring to all multi-phased examinations when the number of competitors is 5 or more.
- G.** Validating an examination result. If Human Resources finds that an examination is incorrectly scored or that a portion of an examination is defective, Human Resources shall:
1. Correct all scoring errors, or
 2. Eliminate the defective portion of an examination and revise the score of each competitor.
- H.** Reviewing exam results. Within 10 days after receiving a notice of examination results, an applicant may request that the Business Manager review all examination questions, answers, scoring methods, procedures, and decisions.
1. If the Business Manager's review discloses any errors, the Business Manager shall return the examination to Human Resources for correction.
 2. If an error affects the scores of other competitors, Human Resources shall revise all incorrect scores.

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- I. Retaining test scores. Human Resources shall retain all examination materials and test scores under a records retention and disposition schedule approved by the Department of Library, Archives and Public Records.
- J. Notifying a competitor. Upon completion of an examination process, Human Resources shall notify a competitor of their final score.

R13-5-303. Applicant Preference Points

If an applicant receives a passing score on an examination and has qualified for placement on an employment list, Human Resources shall add the preference points authorized by A.R.S. § 38-492 to the applicant's final score, provided the applicant submits official documentation of eligibility for preference points. Preference points shall not apply to promotional examinations.

R13-5-304. Employment

- A. Establishing an employment eligibility list. Human Resources shall develop employment eligibility lists for various classifications, as needed. For each list, Human Resources shall arrange the names of competitors in descending order of their final examination scores.
- B. Establishing a list in case of ties. If 2 or more competitors receive the same rating in an examination, the competitors names shall be placed on the list according to their respective ratings on the portion of the examination with the greatest weight. If a tie still exists, the names shall be placed on the list at the same position, in alphabetical order.
- C. Reviewing the employment eligibility list. Human Resources shall submit an employment eligibility list to the Business Manager for approval and certification.
- D. Notifying a candidate. When an employment eligibility list is certified by the Business Manager, Human Resources shall notify a candidate of the candidate's relative ranking on the list.
- E. Duration of an eligibility list. The Business Manager shall establish each new or merged list for 1 year from its effective date. Before a list expires, the Council may extend the duration of or cancel a list. The Council may extend a list for no more than 1 6-month period. The maximum duration of a list shall be 18 months except in the event there is a court order placed on the list preventing promotions from the list by the agency.
 - 1. Restoring a list. If a need arises and a current list is not available, the Council may restore a list that expired or canceled within the past 6 months.
 - 2. Merging a list. If 3 or fewer candidates remain on an existing list, Human Resources may establish a new list and merge the existing list with the new list. When the merged list is established, Human Resources shall rearrange the names in descending order of the candidates' final scores and notify the candidates of their relative ranking. Human Resources shall remove a candidate's name from the new list on the expiration date of the candidate's original list.
 - 3. Retesting a merged candidate. If another examination for the same classification is held before the older list expires, a merged candidate from the older list may take the examination. If the candidate passes the test, Human Resources shall place the candidate on the list according to the new score. The candidate shall remain on the list for its duration.
- F. Removing a candidate. The Business Manager shall remove a candidate from an eligibility list for any of the following reasons:
 - 1. Human Resources is unable to contact the candidate by phone or mail;
 - 2. The Council abolishes the classification for which the list was developed; or
 - 3. The candidate withdraws from the selection process.
- G. Correcting a manifest error. The Business Manager shall correct any manifest error that occurs in developing, using, or maintaining an eligibility list. The Business Manager shall not change the effective date of a list in order to correct an error discovered after posting the eligibility list.

R13-5-305. Promotion

- A. Announcing a promotional examination. Human Resources shall publish an agency-wide announcement when initiating development of an internal eligibility list. Announcements shall include the information in R13-5-301(A).
- B. Applying for promotion. An employee may compete for a place on an internal eligibility list by submitting an internal application form to Human Resources by the application filing deadline.
 - 1. An employee is eligible to take a promotional examination if the employee:
 - a. Satisfactorily completes initial probation by the application filing deadline;
 - b. Meets or exceeds the minimum qualifications for the classification; and
 - c. Receives a standard or above standard performance evaluation for the latest rating period.
 - 2. An employee who participates in developing an examination for an internal classification is not eligible to take the examination for that classification.
- C. Processing an application. Human Resources shall process an applications consistent with the procedures in R13-5-301(B), (C), and (F).
- D. Business Manager review. Within 10 days after a notice of rejection of an application has been mailed to the employee, an employee may request that the Business Manager review a rejected application. The Business Manager may review and

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overturn or concur with the decision of Human Resources. An employee may also request that the Council review the Business Manager's decision.

- E.** Promotional examinations. Human Resources shall conduct promotional examinations consistent with R13-5-302. An employee eligible to take a promotional examination shall notify the employee's supervisor of the time and date of the examination as soon as it is known. A supervisor shall authorize an employee to participate in a promotional examination while on duty.
- F.** Inspecting an examination. Within 10 days after taking a written promotional examination, a competitor may request permission from the Business Manager to inspect a copy of the exam for the purpose of identifying items the competitor believes are incorrect.
1. The Business Manager shall arrange an inspection of an exam during business hours, in an agency office, and in the presence of the Business Manager or an employee authorized by the Business Manager.
 2. The competitor shall advise the Business Manager of the questions or answers challenged.
 3. The competitor may make notes concerning items the competitor plans to challenge but shall not otherwise copy questions in the examination.
 4. The competitor may file a written notice with the Business Manager questioning items in the examination and explaining the basis for any challenge.
- G.** Scoring and validating an examination. Human Resources shall score and validate an examinations under R13-5-302(F) and (G).
- H.** Inspection of examination results. Within 10 days after notice of the results of an examination, a competitor may request to review the competitor's examination with the Business Manager, or an employee authorized by the Business Manager.
1. The Business Manager or the authorized employee shall oversee the competitor's examination inspection.
 2. An employee shall not copy questions or answers, nor make any alterations to the examination papers.
 3. Only the Council, Business Manager, competitor, competitor's attorney and the agency head may inspect a competitor's examination.
 4. Within 10 days of a review, a competitor may file a written notice with the Business Manager questioning examination results on the basis of irregularity, bias, fraud, or scoring error and explaining the basis for any challenge. The Business Manager shall correct any error in the scoring of the examination. An employee may request that the Council review the Business Manager's decision.
- I.** Military leave. Human Resources shall allow an employee returning from military leave to take any examination that the employee could have taken if military service had not intervened. If the employee passes the examination, the Business Manager shall add the employee's name to the appropriate internal eligibility list.
- J.** Establishing an internal lists. Human Resources shall prepare an internal list for a promotional classification with competitor's names arranged in descending order of the competitor's final score
- K.** Establishing a list in case of ties. If 2 or more competitors receive the same rating in an examination, the competitors names shall be placed on the list according to their respective ratings on the portion of the examination with the greatest weight. If a tie still exists, the names shall be placed on the list at the same position, in alphabetical order.
- L.** Approval of list. Human Resources shall submit the internal list to the Business Manager for approval and certification.
- M.** Notifying a candidate. When the list is certified by the Business Manager, Human Resources shall notify a candidate of the exam results and the candidates relative ranking on the list.
- N.** Duration of a list. A list shall remain in force consistent with R13-5-304(E).
- O.** Revising a classification. If the Council orders that a classification be revised, Human Resources shall establish a new list for the revised classification and cancel any existing list.
- P.** Removing a candidate from an internal list. The Business Manager shall remove a candidate from an internal list if:
1. The candidate fails to maintain required qualifications for the classification,
 2. The candidate resigns from agency service, or
 3. The internal list expires.
- Q.** Promotions for a commissioned classification. An agency may establish a job-interest card system for promotions in commissioned classifications. If a candidate submits a job-interest card indicating interest in only specified positions, that candidate shall not be considered for any other position except as outlined in this subsection.
1. An agency head shall offer a promotional position to a candidate ranking highest on the promotional eligibility list who filed a job-interest card for that position.
 2. If there are no job-interest cards for a specific position, an agency head shall offer a promotional position to the candidate ranking highest on the promotional eligibility list. If the employee highest on the promotional list declines the promotion, the agency head shall offer the position to the employee next highest on the list, etc.
 3. For locations that have 2 or fewer positions, an agency head may appoint any promotional candidate who resides in that location regardless of the candidates position on the list.
 4. If a candidate declines an offer of promotion, the Business Manager shall move that candidate's name to the bottom of the promotional eligibility list.

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5. If all candidates on a promotional eligibility list decline a promotion, an agency head shall make a 2nd offer to all candidates on the list.
6. If all candidates on the list decline the 2nd offer, the Business Manager shall cancel the list. Human Resources shall then initiate a process to create a new list for the classification.

R. Promotions for a civilian classifications. Civilian promotions are conducted under R13-5-308 and R13-5-309.

R13-5-306. Reassignment

- A.** Reassignment application. An employee may request reassignment to a different classification with the same or a lower pay range by submitting an application to Human Resources documenting the employee's qualifications. An application for reassignment can be obtained from Human Resources.
- B.** Qualification screening. Human Resources shall determine whether the employee meets the minimum qualifications of the classification. Unless the employee has previously held permanent status in a classification Human Resources shall require the employee to pass an examination for the requested classification. Any employee required to test may request an examination review under R13-5-305(D), (F), and (H).
- C.** Eligibility list. If the employee qualifies, Human Resources shall place the candidate's name on appropriate internal eligibility lists under R13-5-305 (J) and (K).

R13-5-307. Reinstatement

- A.** Reinstatement list. A permanent status employee who separates from an agency may apply for reinstatement within 1 year. Upon approval of the agency head, Human Resources shall place the former employee's name on a reinstatement list for the last classification held by the employee and any previous or closely related classifications for which the employee is qualified.
- B.** Duration of the list. A reinstatement list shall remain in force for a maximum of 1 year. At the agency head's request, the Council may extend the duration of the list for 6 months periods at a time.
- C.** Background investigation All candidates for reinstatement are required to pass a background investigation.

R13-5-308. Hiring Preference

- A.** Order of lists. When an agency head authorizes filling a vacant position, Human Resources shall notify the manager who is filling the vacancy of any employees requesting a transfer to the vacant position. After considering a transfer request, or if there are none, the manager may request a list of candidates for the position, from available eligibility lists in the following order of preference:
 1. Reappointment lists,
 2. Reassignment lists,
 3. Recall lists,
 4. Internal lists,
 5. Reinstatement lists, and
 6. Employment lists.
- B.** Referring candidates. Human Resources shall contact eligible candidates in the above order of preference to be interviewed. Candidates shall advise Human Resources if they wish to be interviewed.
 1. For 1 vacant position, Human Resources shall refer the 3 interested candidates standing highest on each of the lists. Human Resources may refer less than 3 names when there are fewer than 3 candidates on the lists.
 2. For multiple vacancies, Human Resources shall refer 1 more candidate for each vacant position from the lists.
 3. If a list is not available, the Business Manager may refer candidates from lists of the same or higher level as the position being filled.
- C.** Canceling a list. If all candidates on the promotional eligibility list advise Human Resources that they are not interested in a position, Human Resources shall make a 2nd offer to all candidates on the list. If all candidates on the list decline the 2nd offer, the Business Manager shall cancel the list. Human Resources shall then initiate a process to create a new list for the classification.

R13-5-309. Selection

- A.** Selecting a candidate. The manager shall follow the interview and selection policy provided by Human Resources.
- B.** Interviewing. The hiring manager shall interview candidates requesting a transfer, and may interview up to 3 candidates from each certified list. The hiring manager may select a transferee or the top candidate from a certified list without conducting an interview.
- C.** Additional names. If the hiring manager rejects all initial candidates, the hiring manager shall document job-related reasons for their rejection and submit the interview forms to Human Resources. If Human Resources agrees with the hiring manager's reasons for rejection, Human Resources shall refer up to 3 more names from the lists.
- D.** Documenting the selection. Upon making a selection, the hiring manager shall complete the documentation and return all interview and selection materials to Human Resources.

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- E. Record retention. Human Resources shall retain interview and selection records under a records retention and disposition schedule approved by the Department of Library, Archives and Public Records.

R13-5-310. Pre-employment Processing

- A. Pre-employment screening. Before appointment to a position, a candidate shall successfully pass a background investigation and any other examination considered appropriate by the agency head.
- B. Withdrawal from selection process. If a candidate elects to withdraw from the selection process, Human Resources shall document the candidate's withdrawal.
- C. Failing to successfully complete an examination. If a candidate fails to successfully complete any of the requirements in subsection (A), Human Resources shall document the failure and disqualify the candidate.
- D. Final processing. When a candidate passes all the pre-employment requirements, Human Resources shall prepare and submit the appropriate forms to the agency head for approval.
- E. Declining position offers. Human Resources may remove from a certified list any candidate who declines an appointment offer.
- F. Requesting accommodation. If a selected candidate requests special accommodations under State or federal law, Human Resources shall confer with appropriate personnel to determine if a reasonable accommodation is possible.

R13-5-311. Appointments

- A. Required oath of office. An appointee shall read the oath described in A.R.S. § 38-231(G) and agree in writing to uphold the office before the agency head, or a designee authorized to administer oaths.
- B. Refusal to take oath. Any person who refuses or fails to take the oath required by this Section within the time provided shall forfeit the right to the position.
- C. Filing of oath. When the oath is signed by an appointee, Human Resources shall file the oath in the employee's personnel file.

R13-5-312. Limited-Term Appointments

- A. Limited-term position. A limited-term position is either temporary or funded from sources outside an agency's regular legislative appropriation. An appointee to a limited-term position shall, after successfully completing initial probation, have the rights of a permanent employee, except for the opportunity to compete for retention against regular employees in cases of layoff due to a reduction-in-force.
- B. Certifying a candidate. An eligible candidate is certified based upon the candidate's position on the eligibility list and the candidate's willingness to accept a limited-term appointment.
- C. Separation. The agency may separate a limited-term employee at any time before expiration of the appointment by notifying the employee in writing. If provisional or intermittent employees remain employed in the same classification, the agency shall not separate a limited-term employee except for reasons listed in A.R.S. § 41-1830.15.
- D. Effect of transfer or promotion.
1. A limited-term employee who transfers or promotes from a limited-term position to a non-limited-term position shall obtain the rights of a permanent employee. Time spent in a limited term position is counted as service time in cases of layoff due to a reduction-in-force.
 2. An employee who transfers or promotes from a non-limited-term position to a limited-term position shall retain the rights of a permanent employee. Time spent in a limited-term position is counted as service time in cases of layoff due to a reduction-in-force.

R13-5-313. Provisional appointments

- A. Provisional appointment. When no employment or internal list is available, an agency head may make a provisional appointment. A provisional appointment continues only until an eligibility list is certified by the Business Manager.
- B. Length of appointment. Within 12 months of a provisional appointment, Human Resources shall conduct an appropriate examination and establish an eligibility list for a classification with a provisional appointee.
- C. Separation. Upon separation from a provisional appointment, an employee shall have no right of appeal to the Council for review of the agency head's action.

R13-5-314. Intermittent Appointment

Intermittent position. When an agency head needs a person to work on an intermittent or irregular basis, the agency head shall request a list of candidates for intermittent appointment. An applicant who meets the minimum qualifications and indicates willingness to accept the terms of intermittent employment shall be placed on an eligibility list for selection.

R13-5-315. Employee Conduct

- A. Standards of conduct. An employee shall perform the duties and responsibilities of the employee's assigned classification and position. An employee shall comply with applicable laws, rules, and agency policy. An employee shall demonstrate respect, fairness, diligence, impartiality, courtesy, efficiency, and integrity in all contacts with the public and other employees.

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- B.** Fitness for duty. If a supervisor has reasonable doubt that an employee is psychologically or physically unable to perform the essential duties of the position, the supervisor shall request the agency head's permission to have the employee evaluated by a psychologist or physician determined by the agency. Upon approval, Human Resources shall schedule an appointment, and the employee shall submit to an evaluation. The examiner shall provide the agency head with conclusions, recommendations, and other information necessary to decide if the employee is fit for duty.
- C.** Political activities. An agency employee shall not violate the provisions of A.R.S. § 41-772 concerning permissible and improper political activities.
- D.** Conflict of interest. An agency employee shall not violate the conflict of interest provisions of A.R.S. §§ 38-501, 38-502, 38-503, and 38-504 while engaged in outside activities or employment.
- E.** Nepotism. An employee or candidate for employment shall not be appointed to any position in violation of A.R.S. § 38-481, nor shall an employee misuse or abuse appointment privileges.
- F.** Attending council meetings. With supervisory approval, an employee may attend a meeting of the Council during working hours if the employee is an interested party in a matter scheduled for consideration. The employee may have another representative assist in the presentation before the Council.
- G.** Employee organizations attendance at Council meetings. The agency head may authorize recognized employee organizations to send at least 1 representative to each Council meeting during working hours.

R13-5-316. Probation

- A.** Initial probation. An employee shall serve an initial probationary period of 12 months.
- B.** Promotional probation. An employee shall serve a promotional probationary period of 12 months.
- C.** Effect of military service on probation. A probationer may be called into active military service. If the probationer returns to the agency and satisfactorily completes probation, the employee's personnel record shall show that the employee achieved permanent status on the date the employee would have completed probation if military service had not intervened.
- D.** Extension of probation. An agency head may extend an employee's probationary period by adding periods equal to the time the employee was absent from work or when the employee's performance was below standard. If the probationary period is extended, the manager shall notify the employee of the extension before the end of the probationary period.
- E.** Satisfying probation. A probationer who achieves a standard or higher performance evaluation by the end of the probationary period shall obtain permanent status in the appointed classification.
- F.** Permanent status by default. An employee shall achieve permanent status by default if the employee's manager either fails to reject or acts to extend the probationary period prior to the last day of the employee's probation.
- G.** Rejection of a probationer. An agency head may, at any time during the probationary period, reject a probationer without cause and without the right to Council review.
- H.** Effect of rejection of initial probationer. If an employee is rejected during initial probation the employee shall be separated from the agency.
- I.** Effect of rejection of promotional probationer. If a regular employee is rejected during promotional probation or probation for a different but equal classification, the agency head shall reappoint the employee to a vacant position in the employee's former classification or a different but equal position for which the employee is qualified. If there are no vacancies in an appropriate classification, the agency head may temporarily assign the employee until a vacancy is available.
- J.** Notice of rejection of probation. An agency shall notify a rejected probationer as follows:
 - 1. The employee's manager shall prepare a notice, stating the effective date of the rejection. The manager shall ensure that this date is no later than the last day of the probationary period.
 - 2. The employee's manager shall obtain the agency head's signature on the notice of rejection.
 - 3. The employee's manager shall serve the probationer with the notice, either in person or by mail, on or before the effective date of rejection.
 - 4. The employee's manager shall submit a copy of the rejection notice to the Business Manager within 20 days after the notice is served.
- K.** Review of rejection of promotional probation. Within 20 days after the employee's manager delivers or mails the notice, a rejected promotional probationer may file a written request with the Council for review of the rejection. The Council may review the procedures utilized by the agency to assure conformity with Council rules and statutes.
- L.** Withdrawal of rejection. At any time before the Council acts on a probationer's rejection, the agency head may withdraw the notice of rejection and restore the employee to the previous position or another position for which the employee is qualified.
- M.** Probation for returning employees. If a separated employee is reinstated to a classification previously held with permanent status, the agency head may require the employee to serve an initial probationary period. When a separated employee is recalled or reinstated into a classification different from any classification previously held with permanent status, the employee shall serve a probationary period.

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- N.** Probation not required. If an employee is recalled or reappointed within 2 years after undergoing a reduction-in-force, the employee shall not be required to serve a probationary period if reappointed to the same classification previously held with permanent status. An employee shall not be required to serve another probationary period if the employee is:
1. Reinstated by the Council, or
 2. Reassigned or demoted by the agency head into a classification previously held by the employee.

R13-5-317. Performance Evaluations

- A.** Establishing an evaluation program. The Council shall adopt and an agency shall administer a performance evaluation program. The program shall include a rating system that informs the agency head and the employees of their relative level of performance. The evaluation program shall include training on how to achieve and maintain standard performance and how to improve their performance ratings.
- B.** Performance evaluation manual. The Council shall provide a manual that provides clear and concise guidelines for objectively measuring and reporting employee performance. Only the Council may authorize a revision of the manual. All employees shall receive a copy of the manual, which includes evaluation procedures and forms.
- C.** Frequency of evaluations. Supervisors shall evaluate and give each permanent status employee a written performance evaluation at least 1 time in each 12 month period. Supervisors shall evaluate probationary employees at least 1 time in each 6 month period.
- D.** Effect of failure to evaluate. If an employee's supervisor fails to evaluate the employee, or fails to evaluate the employee by the end of the rating period, the employee shall be given no less than a standard evaluation for that period.
- E.** Grieving an evaluation. An employee who receives a less than standard rating may file a grievance with the agency head. If the grievance is denied by the agency head, the employee may grieve to the Council any overall rating that:
1. Is less than standard.
 2. Would cause a reduction in pay, or
 3. Would result in withholding or postponing a salary adjustment.

ARTICLE 4. ASSIGNMENTS

R13-5-401. Special Duty Assignments

- A.** General. An agency head may assign an employee to a special duty assignment in the employee's current classification or a higher classification. A special duty assignment is temporary and is not a promotion.
- B.** Pay and eligibility. An agency head may add special-duty pay to the employee's base pay. If the special duty assignment is for a different or higher classification, the agency head may authorize a pay rate within that classification. Special duty assignments are subject to the following conditions:
1. The assigned employee meets the minimum requirements of the special duty classification; and
 2. The assigned employee performs the duties of the assigned classification.
- C.** Review by council. Special duty assignments shall be biennially reviewed by the Council no later than September in even numbered years.
- D.** Return to regular duty. Upon completion of a special duty assignment, the agency head shall discontinue special duty pay and reassign the employee to the previously held position or to a similar position in the same classification at the employee's normal pay level.

R13-5-402. Uncovered Appointments

- A.** Authorization. An agency head may authorize an agency employee to temporarily accept an uncovered appointment within:
1. The agency,
 2. Another state agency,
 3. The Governor's office,
 4. The Legislature, or
 5. Another government agency.
- B.** Employee rights. A classified employee in an uncovered appointment shall retain all rights of a covered employee except for the right to appeal removal from the uncovered appointment.
- C.** Returning to regular duty. Upon completion of an uncovered appointment, the agency head shall reassign the employee to the previously held position or to a similar position in the same classification.
- D.** Leave policy for uncovered employees accepting covered positions: An uncovered employee of a state agency or any state budget unit, may transfer accrued annual and sick leave when accepting a covered position with an agency under the jurisdiction of the Council.
1. Annual leave.
 - a. Up to 360 hours of annual leave may be transferred at the gaining agency's discretion.
 - b. Annual leave in excess of 360 hours shall be paid off by the losing agency.
 - c. An employee shall be paid for any annual leave that is not accepted by the gaining agency.

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2. Sick leave. All accrued sick leave hours shall be accepted by and transferred to the agency.

R13-5-403. Transfer of External Functions

- A.** Transferring a function. If a state program is transferred into an agency, the losing agency shall pay a transferring employee for all accrued compensatory leave as of the date of the transfer. Effective on the date of transfer, the losing agency shall also transfer sufficient funds to the receiving agency to pay for accrued annual leave, recognition leave, and sick leave of a transferring employee.
- B.** Council action. The Business Manager shall determine the classifications of a transferring employee and recommend that the Council adopt other classifications that need to be added or revised.
- C.** Transferee status. A transferee shall retain accrued annual leave, recognition leave, sick leave, and length of State service. A transferee shall also retain the transferee's current rate of pay until the Council reviews and approves a new or existing compensation schedule.
- D.** Appointing transferees. An agency head shall determine the organizational placement of a transferred program and appoint each transferee to an appropriate position.
- E.** Probation. A transferee on probation at the time of the transfer shall complete the transferee's probationary period under R13-5-316 before obtaining permanent status.

ARTICLE 5. EMPLOYEE LEAVE

R13-5-501. Employee Leave Guidelines

- A.** Full-time employees. A full-time employee may accrue the following types of paid leave:
1. Annual leave.
 2. Holiday leave.
 3. Recognition leave, and
 4. Sick leave.
- B.** Leave requests. An employee shall not use leave before it is accrued. An employee shall obtain supervisory approval before taking leave. An agency may establish a policy allowing delayed notice to the employee's supervisor in emergency situations.
- C.** Time accounting records. An agency shall maintain records of time worked, leave earned, leave taken, and accrued leave balances. The agency shall periodically provide leave balance statements to an eligible employee. A non-exempt employee shall report all time worked and all leave taken on a weekly basis. An exempt employee shall report leave taken as directed by agency policy.

R13-5-502. Administrative Leave

An agency head may authorize administrative leave with pay:

- A.** During a disaster, state of emergency, or a day of mourning declared by the Governor;
- B.** When an employee is instructed to not report for duty, or to return home because of a hazardous condition; or
- C.** To temporarily relieve an employee from duty for the good of the agency or the employee.

R13-5-503. Annual Leave

- A.** Computing length of service. For determining annual leave accrual rates, an employee's length of service shall begin on the 1st day of the 1st complete month of employment. Only a complete month of qualifying service is counted before and after a break-in-service. Previous periods of service as a state employee are counted toward annual leave accrual. Periods of military leave and active military service are included in computing annual leave if the employee complies with the requirements of A.R.S. § 38-610.
- B.** Accruing annual leave. An employee in pay status for half of a month shall accrue annual leave. A part-time employee scheduled to work 10 or more hours in a week shall accrue annual leave based on the percentage of full-time hours specified in the appointment. A part-time employee scheduled to work less than 10 hours in a week shall not accrue annual leave. A full-time employee shall accrue annual leave under the following schedule:

<u>Beginning</u>	<u>Completion</u>	<u>Monthly accrual rate</u>
<u>1st year</u>	<u>5th year</u>	<u>10 hours</u>
<u>6th year</u>	<u>10th year</u>	<u>12 hours</u>
<u>11th year</u>	<u>20th year</u>	<u>14 hours</u>
<u>21st year</u>	<u>—</u>	<u>16 hours</u>

- C.** Progression of annual leave. An employee shall progress to the next higher accrual rate on the 1st day of the month following completion of the required length of service.
- D.** Using annual leave. An employee may use accrued annual leave under State and federal law and agency policy. The employee shall schedule the use of accrued annual leave through the employee's supervisor.
- E.** Maximum accumulation and disposition. An employee may accumulate annual leave without limit during a year. At the end of each year, an employee's annual leave balance shall not exceed 360 hours. It shall be the responsibility of each employee to schedule annual leave to avoid having a balance over 360 hours at the end of the year. If an employee's

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annual leave balance on January 1 exceeds the allowed maximum, the agency head may withdraw the excess and deposit the hours as sick leave in the employee's sick leave balance. The agency head may authorize a later date for conversion of excess annual leave if an employee's duty assignment, receipt of recognition leave, injury, or illness prevents timely use of annual leave.

- F.** Compensation for unused leave. Upon separation from agency employment, an employee is paid for any unused annual leave at the employee's current rate of pay.

R13-5-504. Civic Duty Leave

- A.** Leave to vote. Under A.R.S. § 16-401 and 16-402, an employee may be absent with pay for the time required to vote.
- B.** Jury duty. An employee shall report for jury duty as directed by a summons unless officially excused by the Jury Commissioner for reasons under A.R.S. §21-202. When summoned, the employee shall notify or provide the immediate supervisor with a copy of the summons.
1. While on jury duty leave, an employee shall be absent with pay.
 2. Upon receipt of a summons for jury duty, a commissioned employee shall notify the Jury Commissioner of the employee's peace officer status.
- C.** Witnesses. An employee subpoenaed as a witness shall be absent with pay, unless the subpoena is unrelated to agency business.
- D.** Fees. An employee on paid civic duty leave shall forward to the agency all jury duty or witness fees except for reimbursement of travel expenses.

R13-5-505. Compensatory Leave

- A.** Compensatory leave. An agency shall establish policies and guidelines for accruing compensatory leave under the overtime provisions of the Fair Labors Standards Act.
- B.** Using compensatory leave. An employee may use accrued compensatory leave under State and federal law and agency policy. The employee shall schedule the use of accrued compensatory leave through the employee's supervisor.
- C.** Payment upon separation. Upon separation from an agency, an employee shall be paid at the employee's current pay rate for any accrued compensatory leave remaining in the employee's account.

R13-5-506. Donated Annual Leave

- A.** Definitions. In this Section "Recipient employee" means an agency employee who meets the eligibility requirements in A.R.S. § 41-1830.12(C).
- B.** Qualifications. An employee may give accrued annual leave to a recipient employee.
- C.** Requesting donated leave. An employee may submit a written request for donated annual leave under the agency's policy.
- D.** Donating and converting leave. When notified of an employee's need, an employee may donate accrued annual leave by submitting a written notice to Human Resources with the required information under the agency's policies. The donated hours are converted by multiplying the donor's hourly pay by the number of hours donated, and dividing the product by the hourly pay of the recipient employee. Converted hours are added to the recipient's sick leave balance as needed.
- E.** Surplus donations. When the need for donated leave passes, Human Resources shall return any unused donated leave to the donors on a pro rata basis, unless the donors give written notice to Human Resources to deposit their unused hours into an agency "donated-leave bank" to help other employees in the future.

R13-5-507. Holiday Leave

- A.** Paid holidays. The agency shall observe the holidays authorized under A.R.S. § 1-301.
- B.** Eligibility. To be eligible for holiday leave, an employee shall be in pay status 10 or more hours in the workweek.
1. If a holiday occurs on an employee's regular work day, the employee may be absent with pay for the number of hours regularly scheduled to work, up to a maximum of 8 hours, unless the employee is required to work to maintain essential State services.
 2. An employee required to work on a holiday shall receive pay for the time worked, and leave credits for the number of hours regularly scheduled to work on that day, up to a maximum of 8 hours.
 3. If a holiday occurs on a day when an employee is scheduled to work, but the employee is unable to work because of an illness or injury, the employee may take sick leave and accrue holiday leave credits as provided under subsection (C) for the number of hours regularly scheduled to work on that day, up to a maximum of 8 hours.
 4. An employee not scheduled to work on a holiday shall receive leave credits, up to a maximum of 8 hours.
 5. A part-time employee shall accrue prorated leave based on hours authorized to work.
- C.** Accruing holiday leave. An agency may credit holiday leave to the employee's annual leave balance or establish a separate balance for holiday leave. The agency shall add accrued holiday leave to an employee's annual or holiday leave balances.
- D.** Using holiday leave. An employee may use accrued holiday leave under State and federal law and agency policy. The employee shall schedule the use of accrued holiday leave through the employee's supervisor.

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R13-5-508. Industrial Leave

An agency shall establish policies and procedures to comply with statutes regulating industrial leave under A.R.S. § 23-901, et. seq. and A.R.S. § 23-1043.02.

R13-5-509. Leave Amortization

An agency may provide a leave amortization plan for employees planning to retire.

R13-5-510. Leave Without Pay

A. Short-term leave without pay.

1. An agency head shall place an employee on leave without pay when the employee is unable to report to work due to illness or non-industrial injury and the employee has no accrued or donated leave balances to cover the absence. The supervisor may require the employee to submit supporting documentation for sick leave without pay. If the absence exceeds 5 working days, the employee must request leave without pay as outlined in subsection (A)(2).
2. An employee may request a leave of absence without pay of 30 working days or less by notifying the employee's manager as soon as possible and submitting a signed memorandum. The employee shall include the reason for the request and the employee's intended departure and return-to-duty dates. The agency head may approve or deny the request and may set a date for the employee's return. If the leave is approved, the employee's manager shall notify the employee in writing, including any stipulations of approval. If the employee returns on schedule, the employee shall retain the position held before the leave of absence.

B. Extended leave without pay. An employee may request an extended leave-of-absence without pay of over 30 working days by notifying the employee's manager as soon as possible and submitting a written request under the agency's policies and procedures.

1. Approval. An agency head may approve an extended leave without pay. If extended leave without pay is approved, an employee shall sign a leave of absence agreement with the agency. The leave-of-absence agreement shall outline the conditions of the leave and the employee's return to work.
2. Cancellation. An agency head may cancel a leave-of-absence without pay for any of the following reasons:
 - a. The employee violates any condition of the leave-of-absence agreement, including failure to return to work on schedule;
 - b. The agency head directs the employee to return to duty because of a need for the employee's services; or
 - c. The employee requests to return early from the leave-of-absence.
3. Return to work. An employee shall return to duty on schedule from any approved leave of absence unless an extension is approved by the agency. When an employee returns from an extended leave without pay, the agency head shall return the employee to the same position, to another position in the same classification, or to a position in a similar classification for which the employee is qualified, provided:
 - a. The employee complied with all terms of the leave-of-absence agreement, and
 - b. The employee passes background screening by the agency head.

C. Disposition of accrued leave. An employee may retain annual and sick leave balances while on an extended leave-of-absence. An employee shall be paid for any unused compensatory or holiday leave balances at the beginning of an extended leave-of-absence. If an employee is granted leave without pay to accept an uncovered appointment with the Governor, the Legislature, or another State agency, the agency head shall transfer the employee's accumulated sick leave to the receiving agency. The employee's annual leave may also be transferred if the employee and both agencies agree.

R13-5-511. Military Leave of Absence

A. Privileges of military service. An employee shall receive all rights provided by State and federal law for a military leave-of-absence under A.R.S. § 26-168 and A.R.S. § 36-610.

B. Notifying the agency. An employee expecting an assignment to military duty shall notify the immediate supervisor as soon as possible. Upon receiving orders to report, the employee shall submit a copy of the orders and a written request for military leave to the employee's supervisor. The supervisor shall process the request under the agency's policy and procedures for a military leave-of-absence.

C. Extended military leave. If an employee's orders for active duty exceed the time limit for paid military leave, the employee may request to use accrued leave or leave without pay for the remainder of the military leave.

D. Returning to position. Upon return from military leave-of-absence, an agency head shall restore an employee to the position held before the military leave-of-absence, or to a similar position within the employee's classification.

E. Promotion. Upon return from a military leave-of-absence, an employee may be promoted by the agency head if the employee's name was on a promotional list at the time of activation into military service.

R13-5-512. Recognition Leave

A. Employee recognition. An agency head may grant paid time off as part of recognition given to worthy employees under a formal awards program, or as an incentive for continued superior performance. The agency shall publish recognition leave guidelines for annual nominations, selections, and awards.

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B. Adding to leave balance. An employee awarded recognition leave shall receive annual leave hours added to the employee's leave balance.

R13-5-513. Sick Leave

A. Definitions. The following definitions shall apply in this Section:

1. "Family sick leave" means:
 - a. Providing personal care or attending to an employee's family member who has a serious illness, injury, or temporary disability;
 - b. A medical appointment or transporting a family member for consultation, examination or treatment by a licensed health care provider; or
 - c. Attendance at the death or funeral of an employee's family member.
2. "Family member" means an employee's spouse, children, brothers, sisters, and parents by blood, marriage, adoption, or an individual for whom the employee has legal guardianship.

B. Accruing sick leave.

1. A full-time employee shall receive 10 hours of sick leave for each month of service.
2. A part-time employee working more than 10 hours per week shall receive sick leave based upon the proportion of full-time hours worked.
3. The following employees are not eligible for sick leave:
 - a. Part-time employees working less than 10 hours in a week,
 - b. Interns, and
 - c. Intermittent employees.
4. An eligible employee shall receive sick leave credits if the employee is in pay status for at least 1/2 of the employees' working days in that month.
5. Sick leave may be accrued without limit.

C. Using sick leave. An eligible employee may use accrued sick leave after 1 month of service. A supervisor shall authorize sick leave if an employee is absent because of:

1. A medical condition that makes the employee unable to perform official duties;
2. An appointment with a licensed health care provider for consultation, examination, or treatment, or
3. Family sick leave.

D. Family sick leave limits. Family sick leave shall not exceed 40 hours in a year. If an employee has used the authorized 40 hours of family sick leave and exhausted all compensatory and annual leave, the agency head may authorize the employee to use the employee's sick leave.

E. Supervisory review of sick leave. A supervisor may require supporting documentation for any sick leave. If an employee's use of family sick leave or regular sick leave seems abusive or violates any provision of this Section, the employee's supervisor may disapprove the sick leave and charge the absence to the employee's annual leave or leave without pay. When an employee has been on sick leave for 5 or more consecutive days; the supervisor may require the employee to submit a medical evaluation form, signed by a licensed health care provider.

F. Returning from sick leave. An employee shall return to duty or to limited duty as soon as the employee is able to do so with permission of the employee's physician and without posing a risk to the employee or others.

G. Medical review. If a supervisor is concerned about a returning employees' fitness for duty, the supervisor may request a medical evaluation under R13-5-315(B), or request that the employee be temporarily assigned to limited duty.

H. Forfeiture of sick leave. An employee shall forfeit accumulated sick leave upon separation from State service, unless eligible under the provisions of A.R.S. § 38-615.

I. Restoring sick leave. If a former employee is recalled, reinstated, or rehired within 2 years, an agency shall restore the employee's previous sick leave balance. Sick leave for which the employee received compensation under Arizona Statutes is excluded from restoration.

J. Sick leave credits for Arizona State service. Upon appointment to an agency, an Arizona State employee with previously accrued sick leave may have the sick leave credits added to the employee's leave balance, provided:

1. The employee does not receive compensation for accrued sick leave upon separating from a State agency;
2. The employee is hired within 2 years of separating from a State agency; and
3. The employee was hired after December 31, 1996.

K. Agency leave policies. An agency shall establish sick leave policies that comply with all of the provisions of the FMLA.

ARTICLE 6. GRIEVANCES

R13-5-601. Agency Grievance System

A. General. The agency shall provide a system for considering and responding to employee grievances regarding classification, compensation, performance evaluation, and application of Council rules.

B. Denial. When an agency head denies an employee grievance regarding classification, compensation, performance evaluation, or application of Council rules, the agency head shall notify the Council.

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R13-5-602 Council Review

- A.** General. The Council shall only review a grievance related to classification, compensation, employee appraisal system, and application of Council rules after the employee exhausts the remedies in the agency's grievance process. If the grievance remains unresolved, the employee may file a request for Council review within 20 days after the employee receives the agency's notice of denial of the grievance.
- B.** Procedure. An employee shall submit a written request for Council review of a grievance.
1. The employee's request shall include:
 - a. The specific relief sought by the employee;
 - b. The asserted factual basis for relief, and
 - c. An account of the agency's response during the internal grievance process.
 2. Upon receipt of the request, the Council shall send a copy of the request to the agency head.
- C.** Response. The agency may file a written response with the Council at any time before the Council reviews the grievance. The agency head shall send a copy of the response to the employee at least 10 days before the Council reviews the grievance. At the employee's request, the 10 days may be waived.
- D.** Informal dispositions. The Council may informally dispose of a grievance without further review of the merits, under any of the following methods:
1. By withdrawal, if the employee withdraws the grievance in writing or on the record at any time before a decision is issued;
 2. By default to the appearing party, if the employee or the agency fails to appear at the meeting; or
 3. By stipulation, if the parties agree on the record or in writing at any time before the Council issues a decision on the grievance.
- E.** Council review. The Council shall review an employee's grievance in an open meeting. The Council shall allow the employee to make a statement in support of the grievance, and shall allow the agency an opportunity to respond. The Council may limit the length of the parties' statements. In its discretion, the Council may allow the employee or the agency to present testimonial or documentary evidence on the issue. If the Council allows a party to offer evidence, the Council shall allow the other party an opportunity to respond with argument or evidence. The Council may limit the time parties are allowed to present evidence.
- F.** Scheduling of Council review. An employee's grievance shall be scheduled for the next available business meeting of the Council but no sooner than 20 days after the grievance was received by the Business Manager. At the employee's request, the 20 days may be waived.
- G.** Representation by counsel. Both the agency and the employee may have counsel present during the Council's review of the grievance.
- H.** Decision. The Council shall state its decision in an open meeting. The Council shall sustain the agency's action on the grievance unless it finds the agency's denial was arbitrary, capricious, an abuse of discretion or inconsistent with Council rules.

ARTICLE 7. DISCIPLINE AND APPEALS

R13-5-701. Causes for Discipline.

The causes for discipline are found in A.R.S. § 41-1830.15.

R13-5-702. Disciplinary Procedures

- A.** Receiving a complaint. A person may file a complaint with an agency asserting that an employee engaged in activity constituting cause for discipline and requesting that the agency head take appropriate disciplinary action against the employee.
- B.** Initiating disciplinary action. An agency head may take appropriate disciplinary action against an employee for any cause listed in A.R.S. § 41-1830.15.
- C.** Time limit for filing a disciplinary action. An agency shall not file a disciplinary action later than 120 days after the date the agency discovers or should have discovered that the employee engaged in alleged activity constituting cause for discipline. The disciplinary action is deemed to be filed when the notice is filed with the Council, except that:
1. The 120-day time limit does not run during any criminal investigation by the employee's agency, or any other agency, if the disciplining agency informs the Business Manager of the pending criminal investigation and provides the Business Manager with all relevant case numbers and any other information requested by the Council. The agency shall provide a status report every 30 days to the Business Manager. The agency shall notify the Business Manager when a case is taken off criminal hold.
 2. At the request of an agency, the Council may, upon a showing of good cause, extend the time for an agency to file a disciplinary action up to an additional 60 days.
 3. If a manager or a supervisor is aware of the employee's alleged actions that constitutes criminal offense but fails to act the 120-day time limit does not run during the period of the manager or supervisor's inaction, if:
 - a. The supervisor or manager is disciplined for failure to act.

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- b. The offense is a misdemeanor and is discovered within 120 days after the end of the 120-day period for taking disciplinary action.
- c. The offense is a felony.
- D.** Notice of disciplinary action. An agency head shall serve a written notice on the employee within 10 days after the agency files the notice of disciplinary action with the Council. The agency head's notice shall include:
 - 1. A statement of the nature of the disciplinary action;
 - 2. Any prior disciplinary action on which the current discipline is based;
 - 3. The effective date of the action;
 - 4. A specific statement of the causes; and
 - 5. A statement of the employee's right to appeal and the time limit in which the employee must file an appeal with the Council under R13-5-703(A), (B), and (C).
- E.** Amended notice of disciplinary action before appeal is filed. At any time before an employee files an appeal, the agency head may file with the Council and serve the employee or former employee with an amended or supplemental notice of disciplinary action.
- F.** Effect of dismissal. An employee's dismissal from the agency shall entail:
 - 1. Dismissal from all positions held by the employee;
 - 2. Removal of the employee's name from all employment or promotional lists; and
 - 3. Termination of the employee's pay on the date of dismissal.

R13-5-703. Appeals to the Council

- A.** Appealable actions. An employee may appeal any disciplinary action that results in the employee's dismissal, demotion, suspension without pay, forfeiture of accrued leave time, or reduction of pay.
- B.** Form of appeal. To initiate an appeal, an employee shall submit a signed written appeal stating the specific grounds for the appeal.
- C.** Time for appeal. An employee shall file an appeal within 20 days after being served with the notice of disciplinary action.
- D.** Effect of appeal. The Council shall determine whether the cause for the disciplinary action is supported by law and the evidence. The Council may sustain, modify or rescind the disciplinary action. If the disciplinary action is rescinded, the Council shall order the agency head to reinstate the employee and to pay the employee accumulated back pay.
- E.** Amended notice of disciplinary action after employee files an appeal. If good cause exists, an agency head may file with the Council a motion to amend the notice of disciplinary action. The motion shall be filed no later than 30 days before the hearing.
- F.** Notice of hearing. The Council shall notify the parties of the time and place of the hearing.
- G.** Failure to appear. If a party, without good cause, fails to appear at the time and place set for a hearing, the Council may find in favor of the appearing party.
- H.** Conduct of hearings. The Council may sit as a whole at a hearing, or the chair may designate 1 or more of its members to hold the hearing. A record of the hearing shall be reviewed by a majority of the Council prior to making a decision in those cases where only 1 member has been designated to hear a case. The member or members designated to preside at a hearing may administer oaths, subpoena and require attendance of witnesses and the production of books or papers, and cause the depositions of witnesses residing within or outside the State to be taken in the manner prescribed by law for like depositions in civil cases in the Superior Court of this State.
- I.** Witness fees. Witnesses at a hearing, other than employees, are entitled to the fees allowed witnesses under A.R.S. § 12-303.
- J.** Payment of witness fees. If the Council subpoenas a witness on its own initiative, the Council shall pay the witness' fees and mileage. The requesting party shall pay the fees for subpoenaed witnesses. Employees appearing as witnesses on duty shall receive travel expenses from the agency and shall not be entitled to witness fees.
- K.** Discovery.
 - 1. Within 20 days after receiving a notice of appeal, the agency shall provide all material relating to the case, including all investigation materials, to the employee. For the purpose of this rule, hand-written notes substantially incorporated within a report shall not be considered investigation materials.
 - 2. Within 20 days after receiving the agency's discovery, the employee shall provide all material relating to the defense of the employee to the agency.
 - 3. After initial discovery, each party shall provide all new material relating to the case to the other party within 10 days after receipt.
 - 4. If a party fails to provide material as required, the Council may preclude its use at the hearing.
- L.** Motions. All motions shall be in writing and filed no later than 20 days prior to the hearing. A response shall be filed in writing within 10 days after service of the motion. The chair may designate 1 or more members of the Council to hear and rule on a motion, with the exception of a motion to dispose of the case. A motion not filed in accordance with this rule may be precluded by the Council.
- M.** Depositions:

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1. On the motion of a party, the Council may order the deposition of a witness under the following circumstances:
 - a. The witness does not reside within the State or is out of state,
 - b. The witness is too ill to attend the action before the Council, or
 - c. The deposition is for the purpose of discovery in preparing a case before the Council.
 2. The requesting party shall pay the expense of any deposition. An employee of the agency is not entitled to a witness fee for giving a deposition.
 3. The deposition of a witness who is unavailable to appear at a hearing may be used in evidence by either party or the Council.
- N.** Open hearings. The Council's hearings shall be open to the public. The Council may, upon request of a party, exclude non-testifying witnesses from the hearing. The Council may keep excluded witnesses separated and prevent them from communicating with each other until all are examined. The Council may conduct a hearing in executive session under A.R.S. § 38-431.03(A) (1).
- O.** Legal counsel or representative. Before the hearing of any appeal, each party shall designate its legal counsel or representative for the record. The Council shall advise each party without legal counsel that the party may obtain and be represented by counsel at the hearing. At the request of a party, the Council may postpone the hearing for a reasonable length of time to allow a party to obtain legal counsel.
- P.** Presentation of evidence. Both parties may present their evidence and witnesses either personally or through their chosen representative. The Council shall exclude evidence irrelevant to the causes set forth in the notice of disciplinary action.
- Q.** Settlement of disputes. The parties may agree to settle any matter pending before the Council. The parties shall submit the terms of settlement to the Council. If the Council approves the settlement, the settlement becomes final.
- R.** Decision. The Council shall render a decision within 30 days after a hearing. In arriving at a decision, the Council may consider any prior disciplinary actions taken against the employee, providing the information is introduced at the hearing. The Council shall state its decision in an open meeting and shall issue the decision in writing within a reasonable time after the hearing. The Council's decision shall contain findings of fact and its order for disposition of the case.

R13-5-704. Rehearing of Council Decision

- A.** Motion for rehearing.
1. Except as provided in subsection (C), any party in a contested case may file a written motion for rehearing within 20 days after service of the decision. The requesting party shall specify the grounds for a rehearing, as provided in subsection (B). A respondent may file a response to the motion within 10 days after service.
 2. The Council may require the parties to file written memorandums upon the issues raised in the motion and may permit oral argument.
 3. The Council may grant a rehearing on all or part of the issues. If a rehearing is approved, the Council shall specify the grounds for the rehearing, and the rehearing shall cover only those matters.
- B.** Basis for a rehearing. The Council may grant a rehearing for any of the following causes:
1. The Council acted in an arbitrary or capricious manner or abused its discretion;
 2. Misconduct of the Council or the prevailing party;
 3. Newly discovered material evidence which, with reasonable diligence, could not have been discovered and produced at the original hearing;
 4. Error in the admission or rejection of evidence or other errors of law occurring at the hearing or during the progress of the action;
 5. The decision was not supported by the evidence, or
 6. The decision is contrary to law.
- C.** Decisions not subject to rehearing. The Council may issue a decision as final upon making specific findings that a decision's immediate effectiveness is necessary for the preservation of the public peace, health, or safety, or that a rehearing of the decision is impractical, unnecessary, or contrary to the public interest.

R13-5-705. Time Limits

Computation of time limits. In computing any period of time prescribed or allowed by this Chapter the day of the act or event from which the designated period or time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday.

ARTICLE 8. SEPARATION FROM EMPLOYMENT

R13-5-801 Resignation or Retirement

- A.** Notice of resignation or retirement. An employee shall resign or retire from the agency by submitting a letter addressed to the agency head and stating the effective date of the separation.
- B.** Oral resignation or retirement. If an employee resigns or retires orally rather than in writing, the employee's manager shall document the employee's stated separation date and forward the notice through the chain-of-command to the agency head.

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- C.** Abandonment of position. If an employee abandons a position, it shall be deemed to be a voluntary resignation from the agency. The employee's manager shall document the employee's failure to show up for work and forward the notice through the chain-of-command to the agency head.
- D.** Refusal of resignation. An agency head may refuse to accept a resignation and may dismiss an employee under R13-5-701(B).
- E.** Withdrawal of resignation. An employee may withdraw a resignation only by submitting to the agency head a written notice of withdrawal before the employee's separation date. If a withdrawal is not submitted before the separation date, the resignation is final unless both the agency head and the employee agree to withdraw the resignation.

R13-5-802. Reduction in Force

- A.** General. The agency head may conduct a reduction in force when it becomes necessary because of a decrease in authorized positions, service area, funding, program responsibilities, or because of a legislative or executive mandate. If the reduction in force involves removal of a filled position, the agency shall not re-establish the position for 2 years, unless removal of the position was caused by fiscal constraints, legislative action, or court order.
- B.** Alternate methods. An agency head may pursue alternative methods of reducing costs without reducing the number of employees. Council approval will be required when:
 - 1. Temporarily reducing all employees' pay, or
 - 2. Assigning all employees time off without pay.
- C.** Order of layoff. An employee shall be separated from an agency in the following order of preference:
 - 1. Internship appointments,
 - 2. Intermittent appointments,
 - 3. Part-time appointments,
 - 4. Provisional appointments,
 - 5. Probationary limited-term appointments who have not established permanent status,
 - 6. Limited-term appointments who have completed a probationary period but have not established permanent status,
 - 7. Probationary appointments in non-limited term positions, and
 - 8. Permanent status appointments.
- D.** Laying off probationers and special duty assignees. Employees on promotional probation or special duty shall compete for retention in the highest classification for which they hold permanent status.
- E.** Laying off limited-term employees. Limited-term employees shall compete for retention only against other limited-term employees.
- F.** Laying off permanent status employees. If it becomes necessary to reduce the number of full-time employees holding regular appointments, an agency shall use the following method:
 - 1. An employee with the least seniority within a classification shall be the 1st employee reduced from that classification.
 - 2. An employee who is declared surplus to a classification may displace only the least senior employee in other classifications in which the employee previously held seniority rights.
- G.** Determining seniority. Seniority within a classification shall be determined by the number of retention points of an employee. An employee with a greater number of retention points will be senior to another employee with lesser retention points within a classification.
- H.** Using retention points. Regular employees who have the least retention points shall be considered 1st for transfer, classification reduction, or separation.
- I.** Calculation of retention points within a classification. An employee shall receive 1 retention point for each month of service within the employee's classification.
- J.** Calculation of retention points in a classification for which the employee has established rights. If an employee is transferred to a classification previously held by the employee, the employee shall receive 1 retention point for each month of service in that classification and 1 retention point for each month of service in a higher or equal classification.
- K.** Eligibility for retention points. The following guidelines shall be used in determining an employee's eligibility for retention points:
 - 1. If the employee was in pay status for at least half of the employee's working days in that month.
 - 2. An employee shall receive credit for agency service before a separation if the separation was less than 2 years.
 - 3. An employee shall receive credit for periods of military leave under 38 USC § 4311.
 - 4. An employee shall receive credit for periods of uncovered appointments with the agency.
 - 5. An employee's prior State service in a position transferred to the agency shall be counted.
 - 6. An employee shall not receive credit for periods constituting a break-in-service. However, periods of time before and after such break-in-service shall be counted.
- L.** Resolution of ties. If employees have the same number of retention points, the agency shall resolve tied scores by applying the following tie breakers in the following order of precedence:
 - 1. The employee with the greatest length of qualifying service with the agency.
 - 2. The employee with the greatest length of qualifying service with the State.

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3. The employee who placed highest on the eligibility list for the classification, or
4. If a tie continues to exist, it shall be broken by a lottery system.
- M.** Offer of a position in a different classification. An employee who meets the qualification for a different classification for which the employee has no previously established displacement rights may be offered reassignment to a position within that classification provided that such reassignment does not displace another employee in that classification.
- N.** Notifying employees. An agency shall give written notice at least 20 days in advance to each employee being reassigned or separated. The Council may waive the 20 day notice upon proper justification for a reduced time limit. The agency's notice shall include the number of retention points assigned to the employee, the effective date of the action, the new job classification, the pay rate, the location of the position, the employee's right to request a review of the action, and the employee's recall rights, if applicable.
- O.** Employee request for review.
 1. Within 5 days of receipt of a reassignment or separation notice, an employee may submit a written request to the agency head for a review of the procedures resulting in the employee's reassignment or separation. The employee's request shall contain information concerning any errors in the calculation of retention points and a proposed resolution. The agency head shall review the request and respond to the employee within 5 days after receipt of the request.
 2. An employee who wishes further review may submit a written request to the Council within 20 days after receiving the agency head's response. The Council shall investigate and respond to the employee and the agency head by submitting a final decision on the review within 30 days after receiving the employee's request.
- P.** Employee assistance. An agency shall establish a plan to assist all employees who are separated from the agency through a reduction in force.
- Q.** Reappointment list. If a permanent status employee is appointed to a lower classification as a result of a reduction in force or reallocation, Human Resources shall place the employee's name on a reappointment list for the last classification held and any previously held classification for which the employee is still qualified.
- R.** Recall list. If an employee is laid off due to a reduction in force, Human Resources shall place the former employee's name on a recall list for the last classification held and any previously held classification for which the former employee qualifies.
- S.** Order of names. On both recall and reappointment lists, Human Resources shall arrange the names of former employees in descending order of their retention points. If candidates have the same number of retention points, Human Resources shall resolve tied scores by applying the following tie-breakers in the following order of precedence:
 1. The employee with the greatest length of qualifying service with the agency.
 2. The employee with the greatest length of qualifying service with the State.
 3. The employee who placed highest on the eligibility list for the classification, or
 4. If a tie continues to exist, it shall be broken by a lottery system.
- T.** Duration of list. A former employee's name shall remain on a recall list for up to 3 years from the date of separation. The name of a reappointment candidate shall remain on the reappointment list until promoted or the employee separates from the agency.
- U.** Background screening. A candidate on a recall list shall be subject to background screening processes.

R13-5-803. Disability

An agency head shall establish policies and procedures for discontinuing the employment of an employee who becomes disabled and is unable to perform the essential functions of the job. Such policies and procedures shall comply with the applicable state and federal laws.

R13-5-804. Public Safety Retirement System Eligibility

- A.** Membership in the Arizona Public Safety Retirement System is designated by the Council under A.R.S. § 38-842(19)(a). Commissioned employees in the following classifications shall be eligible for membership in the Public Safety Retirement System:
1. Director
 2. Deputy Director
 3. Assistant Director
 4. Bureau Chief
 5. Major
 6. Captain
 7. Lieutenant
 8. Sergeant I
 9. Sergeant II
 10. Officer
 11. Fixed Wing Pilot
 12. Rotary Wing Pilot

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B. Employees who were in the following classifications on December 1, 1972, shall be eligible for membership in the Public Safety Retirement System.

1. Communications Technician
2. Radio Mechanic

NOTICE OF PROPOSED RULEMAKING

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 2. DEPARTMENT OF ENVIRONMENTAL QUALITY

AIR POLLUTION CONTROL

PREAMBLE

- | 1. <u>Sections Affected</u> | <u>Rulemaking Action</u> |
|------------------------------------|---------------------------------|
| R18-2-1001 | Amend |
| R18-2-1003 | Amend |
| R18-2-1004 | Repeal |
| R18-2-1004 | Reserved |
| R18-2-1005 | Amend |
| R18-2-1006 | Amend |
| R18-2-1007 | Amend |
| R18-2-1008 | Amend |
| R18-2-1009 | Amend |
| R18-2-1010 | Amend |
| R18-2-1012 | Amend |
| R18-2-1013 | Amend |
| R18-2-1014 | Amend |
| R18-2-1015 | Amend |
| R18-2-1016 | Amend |
| R18-2-1017 | Amend |
| R18-2-1018 | Amend |
| R18-2-1019 | Amend |
| R18-2-1020 | New Section |
| R18-2-1022 | Amend |
| R18-2-1023 | Amend |
| R18-2-1025 | Amend |
| R18-2-1026 | Amend |
| R18-2-1027 | Amend |
| R18-2-1028 | Amend |
| R18-2-1029 | Amend |
| R18-2-1030 | Amend |
| R18-2-1031 | Amend |
| Table 3 | Amend |
| Table 4 | Amend |
| Table 6 | Amend |
- 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. §§ 49-104(A)(11) and 49-542.
Implementing statutes: A.R.S. §§ 49-104(A)(11), 49-541, 49-542.01, 49-542, 49-543 and 49-546.
- 3. List of all previous notices appearing in the Register addressing the proposed rule:**
Notice of Docket Opening: 4 A.A.R. 3343, October 23, 1998.
Notice of Docket Opening: 5 A.A.R. 2564, August 6, 1999.
- 4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
Name: Mark Lewandowski or Martha Seaman, Rule Development Section

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Address: Department of Environmental Quality
3033 N. Central
Phoenix, AZ 85012-2809

Telephone: (602) 207-2230 or (602) 207-2222 (Any extension may be reached in-state by dialing (800) 234-5677, and asking for that extension.)

Fax: (602) 207-2251

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

Summary. The Arizona Department of Environmental Quality (ADEQ) is proposing changes to the rules that implement the vehicle emissions testing program for area A (Phoenix metropolitan area) and area B (Tucson metropolitan area). The legal descriptions of area A and area B are contained in A.R.S. § 49-541. Contained in the proposed changes are requirements in SB 1427 from the 1998 legislative session, including an exemption from emissions testing for vehicles of a model year equivalent to the current calendar year and the 4 prior model years; a catalytic converter efficiency test and waiver denial for certain vehicles in area A; waiver denials for vehicles with excessive emissions; an increase of the vehicle emissions inspection program area to incorporate high-growth areas adjacent to metropolitan Phoenix; and, in area A only, the implementation of a new test procedure along with more stringent vehicle emissions testing standards for vehicles undergoing the transient loaded emissions test.

The proposed rule also removes state-charged fee amounts for the emissions inspection program from the existing rule text to facilitate fee adjustments in accordance with A.R.S. § 49-543, which requires program fees to cover the full cost of program implementation. Deletion of fee amounts will allow timely readjustment of fees to reflect changes in the vehicle populations to which the rule applies.

The proposed rules also incorporate recommendations included in a 1998 5-year rule review report and update and clarify the fleet vehicle emissions inspection requirements. Finally, many changes are proposed to improve the clarity and conciseness of the regulatory language of the rule.

Purpose. The purpose of this rule is to reduce emissions of carbon monoxide (CO), particulate matter (PM₁₀), and ozone forming pollutants such as nitrogen oxides (NO_x) and volatile organic compounds (VOCs) from diesel and gasoline vehicles in area A and area B. The emission reductions are realized through the vehicle testing program implemented under this rule.

There are several proposed changes to the rule, which include:

- Changes to implement statutory language enacted during the 1997 and 1998 legislative sessions;
- Modifications recommended during the 5-year review of the vehicle emissions rules, approved by the Governor's Regulatory Review Council on September 1, 1998;
- Changes to update the transient loaded emissions test (from IM240 to IM147) and emissions standards;
- Changes to update the emissions standards for the remote sensing program and to requirements for fleet emissions inspection sampling equipment; and
- Improvements to clarify the language of the rules.

ADEQ held stakeholder meetings in Phoenix and Tucson on November 7 and 8, 1998, to discuss the proposed changes to the vehicle emissions and inspection programs with interested parties and modified and adjusted the proposed requirements based upon the outcome of those meetings.

Each of the proposed changes are summarized in the following paragraphs.

Legislative Changes. Under the federal Clean Air Act Amendments of 1990, the urbanized area of Maricopa County was classified as a "moderate" nonattainment area for ozone, CO and PM₁₀ by the Environmental Protection Agency (EPA). However, due to continuing exceedances of each of the standards, the EPA redesignated the Phoenix airshed to "serious" nonattainment area for each of these pollutants. The redesignations were effective June 10, 1996, for PM₁₀, August 28, 1996 for CO, and February 13, 1998, for ozone (see 61 FR 21372, 61 FR 39343, 62 FR 60001, and 63 FR 7290).

In order to address the air quality problems within the Maricopa County area, Governor Fife Symington issued Executive Order (EO) 96-6 on May 24, 1996. Under EO 96-6, a Task Force was created and charged with evaluating and recommending measures that could be implemented to reduce the formation of ozone and emissions of PM₁₀ and CO. From August through September 1996, the Task Force considered hundreds of suggestions by the general public, pri-

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vate businesses, and governmental entities. Additionally, the Task Force collected and evaluated information related to dozens of ozone control measures adopted by jurisdictions in every area of the country. Based on an evaluation of the information presented to them, on December 2, 1996, the Task Force released their report containing 35 recommended air pollution control measures, many of which were adopted by the Arizona Legislature during 1997.

Because further emission reductions were needed, Governor Jane Dee Hull issued EO 97-12 on November 13, 1997, forming a 2nd Task Force to evaluate additional control measures that could be implemented to reduce the formation of ozone and emissions of PM₁₀ and CO. This 2nd Task Force convened in November 1997, and issued a report on February 20, 1998. The Task Force recommended the implementation of an additional 48 control measures, many of which were adopted during the 1998 legislative session.

Today's proposed rule revisions incorporate recommendations in the 1996 and 1998 Task Force reports that were enacted during the 1998 legislative session, as well as improvements to the program mandated by the Legislature in 1997. The following is a summary of the relevant legislative actions:

SB 1002, signed by the Governor on July 18, 1996, included a provision for not allowing vehicles to receive more than 1 waiver from the emissions testing requirements.

SB 1427, signed by the Governor on May 29, 1998, contained several provisions to improve the vehicle emissions testing program, including:

- An expansion of the 1-year exemption from testing requirements for new vehicles to the current model year plus the 4 prior model years;
- A waiver prohibition for vehicles with emissions in excess of twice the standard;
- An increase in the applicable testing region (area A) to incorporate high-growth areas surrounding metropolitan Phoenix; and
- A waiver denial for vehicles with inoperable or ineffective catalytic converters.

HB 2189, signed by the Governor on May 18, 1998, contained technical corrections to statutes pertaining to the vehicle emissions and inspection program, including correction of typographical errors, cross references, and the incorporation of clearer and more consistent language. Today's proposed rulemaking incorporates these technical corrections.

SB 1007, signed by the Governor on May 20, 1998, required ADEQ to set fees for the vehicle emissions inspection program that reflect the full cost of the program, including administration, implementation, and enforcement. As a result, fees for vehicle emissions inspections, certificates of waiver, Director's certificates, and certificates of exemption for out-of-state vehicles are scheduled for adjustment, beginning January 1, 1999. Also under this bill, ADEQ is required to charge fees to cover the cost of administering and enforcing the fleet inspection program. The fees applicable to fleet vehicle inspection permit holders are also scheduled for adjustment, beginning January 1, 1999. The proposed rules are being updated to reflect these requirements.

The following fees are proposed to cover the full cost of the program. The fee for certificates of waiver will increase from \$5 to \$15 in both area A and area B. Fleet certificates of inspection will increase from \$5 to \$6.60 in area A and from \$5 to \$11.60 in area B. Director's certificates and certificates for out-of-state exemptions will be increased from \$3 to \$8.60 in area A and from \$3 to \$6.80 in area B.

The proposed rule deletes the specific fee amounts and indicates that fees will be determined by the state in accordance with A.R.S. §§ 49-543(A) and 49-543(G), as applicable. This will allow reevaluation of fees in a timely manner to account for changes in vehicle populations and mandated changes in program costs. All fees are subject to a public hearing before the Joint Legislative Budget Committee. Notification to the public of changes in fees will be accomplished by the distribution of informational brochures through the vehicle registration process, at Arizona Department of Transportation/Motor Vehicle Division (MVD) registration office, with reregistration mailings, and through MVD automated registration systems.

HB 2001, allowed to go into effect on December 28, 1998, without the Governor's signature, imposed a fee cap on the amount that could be charged for a vehicle emissions inspection test. In area A, the biennial IM240 test fee was capped at \$25 and the annual non-IM240 test fee was capped at \$12.50. In area B, the annual non-IM240 test fee was capped at \$10, effective January 1, 1999.

Today's proposed fee increases take into account many factors including any future decrease in demand (decreased throughput) due to new testing methods implemented in the near-term, inflation, increases in vehicle population (due to population growth and the expansion of the testing area), loss of revenue due to the newer-model year vehicle

exemptions, and decreases in the issuance of waivers.

Five-Year Review. Under A.R.S. § 41-1056, agencies are required to review all their rules at least once every 5 years to determine whether the rules should be amended or appealed and submit a written report summarizing the analyses to the Governor's Regulatory Review Board (GRRC). The analysis of the rules includes:

- An evaluation of the rule's effectiveness;
- A description of written criticisms received;
- Authorization of the rule by existing statutes;
- An evaluation of the enforcement of the rule and its consistency with respect to other rules adopted by the agency;
- A review of clarity, conciseness and understandability; and
- Review of the economic, small business and consumer impacts of the rule.

ADEQ performed the 5-year review for in 1998, and submitted the written report to GRRC on May 21, 1998. The GRRC approved the 5-year review at its September 1, 1998, public meeting. The 5-year review of Article 10, which pertains to the vehicle emission and inspection programs, contained several recommended modifications to improve the rule, including:

- Update of the evaporative system integrity test procedure;
- Update of the gas cap leakage standard;
- Deletion of requirements to inspect for the presence of the fuel neck restricter due to changes in technology that have rendered such a requirement obsolete (also removed by SB 1002, signed by the Governor on July 18, 1996);
- Deletion of requirements to perform the purge test;
- Addition of unsafe or unstable conditions for which a vehicle emissions inspector shall reject a vehicle from testing;
- Modernize the requirements for the low emissions tune-up;
- Update requirements for payments by vehicle grant recipients;
- Modernize the on-road testing requirements for the remote sensing program; and
- Include requirements for calibration of opacity meters.

All of these recommendations are reflected in the proposed rule.

Testing and Standards. One of the control measures recommended by the Task Force to reduce CO and ozone was the implementation of vehicle emissions testing standards for vehicles undergoing the inspection and maintenance emissions test (IM240). Under Table 3 of the existing rule, more stringent IM240 standards (final standards) were to be effective on January 1, 1997. Adoption of the final standards was designed to increase the effectiveness of the IM240 testing program by increasing the identification of vehicles with high emissions. However, studies conducted in the Arizona emissions testing lanes during 1995 and 1996 demonstrated that, without adequate preconditioning of vehicles prior to performing the emissions test, 25% to 30% of the vehicles failing the emissions test under the final standards would be false failures (that is, the vehicle would not actually require repair in order to meet the emissions standards). Since a false failure rate of this magnitude is unacceptable, the implementation of the final standards was postponed until research could be performed to develop an adequate preconditioning routine and appropriate final standards developed.

ADEQ contracted with Sierra Research, Inc. to evaluate a number of issues related to the IM240 standards, including:

- Development of alternative IM240 cutpoints that maximize CO benefits and result in acceptable failure rates;
- Evaluation of failure rates associated with alternative IM240 standards using current preconditioning procedures and more sophisticated preconditioning procedures;
- Evaluation of the impact on test duration for each of the standards scenarios; and
- Evaluation of the emissions and test time impact of exempting new vehicles from the testing requirements.

The current, IM240 transient loaded emissions test incorporates 2 phases. Phase 1 is 93 seconds in length, and phase 2 is 147 seconds, for a total of 240 seconds. In researching a test method to provide sufficient preconditioning for the final standards, 2 methods were compared to the current transient loaded IM240 test:

- 2 back-to-back IM240 tests; and
- Multiple IM147 (IM240, phase II) tests, up to 3 back-to-back tests.

For failing vehicles, 2 IM240 tests would require as much as 480 seconds for the full duration. Studies indicated that 2 consecutive IM240 tests are not sufficient to properly precondition all vehicles, and some falsely failed both tests. Because the IM147 driving cycle is more aggressive than the Phase I of the IM240 driving cycle, the studies revealed

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that the third of 3 consecutive IM147 tests more fully preconditions vehicles. A maximum 441 seconds (full duration) for 3 consecutive IM147 tests are involved when a vehicle fails.

For both transient loaded multiple test methods, the current standards (EPA start-up) were compared to EPA final standards and standards developed by Sierra Research that targeted maximum CO emissions benefits, moderate tightening of HC standards, and slight adjustments of NO_x standards. The proposed standards developed by Sierra Research were evaluated using a limited database. In order to provide final validation of these standards and obtain full EPA approval of the revised test procedure and standards, additional data are currently being generated by ADEQ. The outcome of this study, may necessitate future minor adjustments to individual standards to realize full emissions reduction benefits expected from the revised test and standards.

Multiple IM147 tests using the proposed standards will increase identification of correctly failing vehicles from a current rate of about 11% to about 16%. The majority of this increase in the failure rate will be for excessive CO emissions not identified by the current test and standards. Using the retest algorithms to ensure vehicle preconditioning and fast-pass standards to reduce test time, the IM147 test duration is significantly less than that of the IM240. Further, with the exemption of the most current vehicle model years from testing, IM147 testing represents a 17% time savings for each vehicle tested when compared to the back-to-back IM240 test.

Successful implementation of the transient loaded test was predicated on the implementation of final standards in order to achieve necessary air quality improvement goals. The final standards will allow area A to meet CO National Ambient Air Quality Standards, and prevent federal intervention into state affairs. If the State is unable to meet its obligations under air quality plans, EPA may have to impose a federal air quality plan and withhold federal highway funds from the State. The IM147 test will enable ADEQ to adopt final standards that result in optimal identification of vehicles that emit excess pollution.

The benefits of the IM147 test using final standards are:

- increased identification rate for true failures; and
- decreased identification of true passes as failures (false failures).

Remote Sensing Program and Fleet Emissions Testing Equipment. The proposed rule includes changes to update the remote sensing notification requirements and applicable emissions standards. Changes to notification requirements proposed in the rule include the deletion of an obsolete requirement for a remote sensing unit to twice identify a vehicle exceeding the emissions standards before an emissions test is required at a state testing facility. As proposed, the rule will be consistent with the current statute and require emissions testing at a state facility after the 1st time the vehicle is identified as exceeding the emissions standards.

The proposed revisions to the remote sensing standards are identified in Table 6. The remote sensing standards were last modified in June 1996. The proposed revisions to Table 6 will update the rule to reflect the current standards.

In addition, the rule proposes changes to R18-2-1019 to include requirements for new vehicle testing equipment to be required for fleet vehicle emission testing permit holders. The purpose of this revision is to require repair equipment that corresponds with new vehicle technologies.

Clarity. Numerous changes have been made throughout the rules to improve the clarity and understandability of the rules. In particular, R18-2-1019 was reorganized completely by deleting the old section and proposing an entirely new R18-2-1019. Other changes included changing verbs to the present tense, replacing language that does not conform to the rule writing standards of the Secretary of State's Office or the GRRC's rule writing conventions, deleting obsolete or confusing language, and in general revising the rule so that it is clear, concise, and understandable.

6. A reference to any study that the agency proposes to rely on its evaluation of or justification for the proposed rule and where the public may obtain or review the study, all data underlying each study, any analysis of the study and other supporting material:

Analysis of Alternate IM240 Cutpoints, Phase 2 Testing, and Exempting New Vehicle Models on Test Duration and Projected I/M Benefits, Report No. SR98-05-01, May 12, 1998, prepared by Sierra Research, Inc., Sacramento California, for ADEQ, available through ADEQ's Library.

Draft Final Report, *Determination of Emissions Credit and Average Test Times for IM147 Testing*, November 9, 1998, prepared by Sierra Research, Inc., Sacramento California, for the U.S. Environmental Protection Agency, available through ADEQ's Library.

7. 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.

8. The preliminary summary of the economic, small business, and consumer impact:

The major economic impacts of this rule will be on vehicle owners whose vehicles are registered in area A and area B. A deregulatory impact is achieved for owners of new and relatively new vehicles (those manufactured in the current model year and 4 prior model years) who will be exempt from emissions testing. For those not exempt from testing, alternative emissions standards (cutpoints) are introduced through a different transient loaded test protocol known as the IM147 in order to achieve the air quality goals expressed in the State Implementation Plan (SIP). The Clean Air Act Amendments of 1990 required metropolitan areas with the most serious air quality problems to implement "enhanced" inspection and maintenance (I/M) programs. Due to continuing exceedances of the National Ambient Air Quality Standards (NAAQS), the EPA redesignated the urbanized area of Maricopa County from "moderate" to "serious" for ozone, carbon monoxide (CO) and particulate matter (PM10).

Unless SIP air quality goals are met, the health of area A residents and visitors continue to be put in jeopardy. Officials of the Arizona Department of Health Services (ADHS) and other public health professionals have documented the escalating costs to the health care system in recent years of an increase in the incidence of asthma and other chronic lung diseases in Maricopa County. These diseases are either caused or aggravated by air quality problems. If air quality does not improve and area A continues to be in serious nonattainment, the state could also lose about \$400 million in federal highway funds managed by the Arizona Department of Transportation (ADOT) over the next few years. Because federal highway funds are vital to the construction and maintenance of Arizona's planned transportation infrastructure, any fund loss has the potential for negatively impacting all vehicle owners (not just local residents) who drive through the state. To address the problem, the proposed rule puts into place several measures that will be implemented and enforced by ADEQ's Vehicle Emissions Inspection Program (VEIP). The proposed rule contains recommendations made by the Governor's Air Quality Task Force subsequently enacted by the Arizona Legislature and implements strategies that utilize findings from air quality research studies commissioned by the EPA¹ and ADEQ.²

The principal aspects of the VEIP that the proposed rule will change are:

- 1) the introduction of an alternative emissions test (the IM147) to replace the IM240 test;
- 2) the expansion of area A to include parts of Maricopa, Yavapai and Pinal Counties;
- 3) the exemption from testing of all vehicles manufactured in the current model year plus 4;
- 4) eligibility for the repair grant assistance program will be expanded to include owners whose vehicles have received a 1-time only waiver since January, 1997;
- 5) government fleet operators who hold an ADEQ permit to self-inspect their vehicles will commence paying for Certificates of Inspection (COIs);
- 6) waiver denials for all vehicles that emit more than 2 times the standard; and
- 7) waiver denials for all vehicles with inoperable catalytic converters.

The IM147

The impetus for the introduction of an alternative emissions test (the IM147) to replace the existing IM240 test in Maricopa County came from the effort to find a more effective test that would help demonstrate attainment while reducing the number of what are known in the trade as "false-failures" for those vehicles subject to the program. ADEQ explored 2 options: 1) implementation of EPA final cutpoints for the IM240 that have the most stringent emissions standards; and 2) implementation of the IM147 test protocol. The objective of the Sierra Research studies was to determine what specific strategy ADEQ should adopt in order to maximize benefits.

The Department concluded from the Sierra Research findings that the IM147 transient loaded test protocol is a more effective and efficient vehicle emissions test. Effectiveness is achieved with greater emissions reductions. The research evaluated what emissions reductions would occur for carbon monoxide (CO), hydrocarbons (HC) and nitrogen oxides (NOx). A comparison of the current IM240 and the IM147 test protocols yielded the following percent reduction in average emissions per vehicle for all testable (1981 and later model year) vehicles:

	<u>IM240</u>	<u>IM147</u>
CO	23%	32%

1. Sierra Research, Inc., Determination of Emissions Credit and Average Test Times for IM-147 Testing, prepared for the US Environmental Protection Agency, Sacramento, CA, November 9, 1998.
2. Sierra Research, Inc., Analysis of Alternate IM240 Cutpoints, Phase 2 Testing, and Exempting New Vehicle Models on Test Duration and Projected I/M Benefits, prepared for the Arizona Department of Environmental Quality, Sacramento, CA, May 12, 1998.

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HC	21%	26%
NOx	9%	10%

The percentages indicated are a weighted average (not the arithmetic mean); that is, they are weighted according to the number of observations found in each of the pass/fail categories yielded by the research sample (n=336). The results show significant emissions reductions for carbon monoxide, and improvements of smaller magnitudes for HC and NOx. These emissions reductions, when combined with the reductions to be achieved by other proposed measures in this rule, will result in higher failure rates of vehicles that truly exceed the standards. More definitive conclusions about air quality benefits will be forthcoming when a more comprehensive analysis of research results from a much larger statistical sample become available in the fall of 1999. By introducing more stringent emissions standards in the form of alternative cutpoints, this rule will maximize carbon monoxide benefits and result in failure rates that are more accurate, according to Sierra Research.

Efficiency is achieved with the IM147 on 2 levels: 1) the limitation of what are known as "false failures" that are inherent in the final standards for the IM240 transient loaded test; and 2) a decrease in the average test duration (resulting in shorter testing times) when multiple test protocols are carried out. False failures are caused by inadequate pre-conditioning of vehicles associated with cold starts, shutting off engines while queuing, evaporative system loading, ambient temperature and other factors. Inadequate pre-conditioning can cause high emissions due to air-fuel ratio enrichment or an inactive catalytic converter. False failures represent an inefficiency in the IM240 final standards test protocol. If ADEQ were to implement the IM240 final standards, owners of falsely failed vehicles would make unnecessary expenditures of time and money (for vehicle repairs). If the final IM240 cutpoints were to be implemented, Sierra Research stated that "... a significant portion of the [failed vehicle] fleet (that is, 20 to 25%) would pass an IM240 test if given an immediate re-test." Because the IM147 provides for pre-conditioning methods to be built into the test protocols, the reduction or limitation of false failures will therefore result in clearly identifiable benefits to owners of falsely failed vehicles.

The 2nd level of efficiency achieved by the IM147 is a reduction in testing duration. Sierra Research found that the IM240 test using final standards with pre-conditioning has a weighted average test duration per vehicle of 137 seconds. On the other hand, the IM147 test with pre-conditioning and final standards has a weighted average test duration per vehicle of 107 seconds. This decrease in test duration addresses a concern that the Department had when considering policy changes to the I/M program. ADEQ considered that either an increase in testing times or administering tests that would force vehicle owners to spend inordinately long periods waiting, would be unacceptable to the motoring public.

Expansion of Area A and Exemption of Newer Vehicles

The expansion of area A mandated by SB1427 increases the Maricopa County geographical area that is to be covered by the VEIP, and encompasses portions of Yavapai and Pinal Counties for the 1st time. But the increase in the number of vehicles in areas where owners will have to submit their vehicles for emissions testing will be more than offset by the exemption from testing of all vehicles manufactured in the current model year and the 4 prior model years. Vehicles manufactured in the model years 1995 to 1999 comprised a large portion (just under 30%) of all Maricopa County vehicles registered with the ADOT Motor Vehicle Division (MVD) as of July 31, 1998. This portion of the vehicle fleet, however, is responsible for only a small fraction of identifiable excess emissions. Sierra Research has analyzed test results and observed that the 1992 and newer model year vehicles account for only about 5% of the total excess IM240 emissions attributable to 1981 and later model year vehicles in the Arizona VEIP. Since an overwhelming majority of new and newer vehicles are "clean," their exemption from emissions testing will benefit their owners as well as enable a more efficient and productive use of the testing network.

Test Fees to Shift from Partial to Full Coverage of VEIP

As a result of changes mandated by the Arizona legislature and SB 1007, vehicle owners will pay additional fees for various aspects of the VEIP. The VEIP is a multi-faceted program that aims to reduce vehicle emissions from all non-exempt vehicles. Since its inception, VEIP fees collected by ADEQ have historically covered only a portion of total program costs and subsidies have been provided by legislative appropriations from the State General Fund and other sources. Effective July 1, 2000, the fee structure is shifting from partial to full coverage of VEI Program costs. Authorized by A.R.S. § 49-543, this change recognizes that vehicle owners must defray the costs of the VEIP if Arizona is to meet its SIP obligations and continue to receive federal highway funds.

The Department also made fee adjustments for vehicle emissions inspection, certificates of waiver, Director's certificates, and certificates of exemption for out-of-state vehicles for the period starting January 1, 1999, through June 30, 2000. These reduce, but do not completely eliminate, the General Fund subsidies. On July 1, 2000, the Department will commence charging full coverage fees. Actual fees to be paid by vehicle owners are still unknown because nego-

tiations for the State Contract have not been completed. It is anticipated that by the time fees for the full cost of the program are charged, the General Fund subsidies will cease.

Since the legislative intent is for vehicle owners (public and private) to shoulder all program costs, government fleet operators who possess permits to self-inspect will no longer be exempt from paying fees for Certificates of Inspection (COIs). As soon as this proposed rule package becomes final and effective, government fleet operators will pay for COIs. This is expected to yield revenue of about \$126,000 annually.

Air Quality Benefits -- The beneficiaries of this rule are all residents and visitors to area A and area B, who will breathe cleaner air. According to the US Environmental Protection Agency in a report prepared for the U.S. Congress entitled The Benefits and Costs of the Clean Air Act: 1970 to 1990, October 1997, motor vehicle pollution controls adopted under the Clean Air Act nationwide have been largely responsible for a 50% reduction in carbon monoxide (CO) emissions, a 30% reduction in emissions of nitrogen oxides (NOx), a 45% reduction in emissions of volatile organic compounds (VOCs), and a near elimination of lead emissions. The report's executive summary (p.ES-5) stated that lower ambient concentrations of identified criteria pollutants "...yield a substantial variety of human health, welfare and ecological benefits. For a number of these benefit categories, quantitative functions are available from the scientific literature that allow estimation of the reduction in incidence of adverse effects. Examples of these categories include the human mortality [death] and morbidity [sickness] effects of a number of pollutants, the neuro-behavioral effects among children caused by exposure to lead, visibility impairments, and effects on yields for some agricultural products.

A.R.S. § 41-1055 Requirements for an EIS

B(2) Persons Directly Affected by the Rule

a) Arizona Department of Environmental Quality -- The ADEQ Vehicle Emissions Inspection (VEI) Section will be charged with implementing and enforcing the rule.

b) Arizona Department of Transportation -- Some changes to the ADOT Motor Vehicle Division vehicle registration process have occurred as a result of the exemption of vehicles with the current model year plus 4, and the expansion of area A. ADOT will also receive and administer federal highway funds earmarked for Arizona.

c) Government Fleet Operators -- Federal agencies and political subdivisions of the state that operate fleets and possess permits to self-inspect will start paying for COIs.

d) Vehicle Owners -- Motorists and vehicle owners will pay for the full costs of the VEIP.

e) Motor Vehicle Dealers and Fleet Operators -- Vehicle owners registered in area A or area B will be affected in different ways, depending mainly on the age of their vehicles, which determines exemption status. Owners of current model year plus 4 vehicles will be exempt.

f) Repair Shop Businesses -- Owners and operators of vehicle repair shops in area A are likely to see an increase in their business as a result of the anticipated increase in vehicle failure rates.

g) Private Sector Manufacturers and Distributors -- Makers and sellers of testing equipment and supplies, vehicle spare parts and other materials needed to repair failed vehicles and upgrade the testing network, are also likely to see a net increase in their business in the expanded area A and area B.

h) Residents, Consumers and Visitors to Area A and B -- People who reside in these 2 metropolitan areas will breathe cleaner air. They will be the main beneficiaries of this rule's implementation.

B(3) Cost-Benefit Analysis

I. Costs and Benefits to State Agencies

a) ADEQ -- The Vehicle Emissions Inspection (VEI) Section will implement the rule. Implementation of the proposed rule will require several changes to existing I/M program processes. Previous legislative changes have already cut back many aspects of the VEIP, the most notable of which was the elimination of 17 FTEs from the program. This downsizing has reduced administrative costs by \$1.56 per test. Applying this figure to the 1999 projected IM240 tests, this translates to an estimated savings to taxpayers of less than \$1 million (\$906,000).

The Department is in the process of negotiating an amendment to the State VEIP contract to account for changes being implemented by statute and this rule. The negotiation and the upgrading of existing testing facilities is likely to result in an increase in fees and will change the testing/repair process. The use of the IM147 alternative emissions test will be accompanied by an increase in the number of vehicle failures. This is expected to result in more emissions reductions following vehicle repairs. Additionally, the number of vehicles tested under the program will change due to area A expansion, the current model year plus 4 exemptions, and to a lesser degree, the waiver prohibition for high-emitting vehicles and vehicles with inoperable catalytic converters. Fewer waivers are expected to be issued; that is, more waiver denials will be made.

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Test Fees -- As authorized by SB 1007, signed by the Governor on May 20, 1998, ADEQ will set fees for the VEIP to reflect the full cost of the program, including administration, implementation and enforcement. The previously authorized fees (\$20 per vehicle for the biennial test and \$10 for the annual test) paid for only a portion of the VEIP costs. The remainder of program costs were funded by legislative appropriations from the State General Fund and other sources.

Commencing on January 1, 1999, the biennial test fee increased to \$25 and the annual fee increased from \$10 to \$12.50 in area A, and from \$8.05 to \$10 in area B as a result of the passage of HB2001 in December 1998. These fees will be collected until June 30, 2000. Starting July 1, 2000, full coverage fees will be paid by vehicle owners. What these fees will be is unknown at this stage. It is anticipated that the General Fund subsidy of the VEIP will cease in the fiscal year ending 2000. The new fee will be collected for the term of the contract, which is scheduled to expire on December 31, 2000.

Expansion of Area A -- Motorists with vehicles that are older than the current model year plus 4 and registered in the expanded portions of area A in Maricopa and portions of Pinal and Yavapai Counties will be brought into the I/M program for the 1st time. The expansion of area A will include communities on the periphery of the Phoenix Metropolitan area such as New River, Apache Junction and portions of Goodyear. The testing of vehicles in the expanded areas of Maricopa and Yavapai Counties commenced on January 1, 1999; those in Pinal County will be tested starting January 1, 2001.

VEI staff reviewed ADOT Motor Vehicle Division (MVD) data on the number of vehicles registered in the expanded portions of area A. They examined zip code lists that reflected the new area A boundaries as defined in Senate Bill 1427. The data were then refined using Maricopa County Transportation Analysis Zone (TAZ) maps to make estimates of vehicle to population ratios in areas that were not confined to the expanded area A region. An estimated 27.6% of these vehicles will be of a newer model year, making them exempt from emissions testing. Approximately 53,910 vehicles are thus added to the emissions testing program as a result of the expansion of area A. The number of vehicles used to commute into the vehicle emissions testing area that are now required to undergo the emissions test is unknown; therefore, this number may overestimate the actual number of vehicles in the expanded portions of area A. A majority of vehicles (75.9%) that will be added to the testing program due to the expansion of area A are located in Apache Junction (Pinal County). Table 1 shows the 1998 and projected 1999 to 2002 number of vehicles that will be emissions tested in accordance with the statutory provisions of SB 1427.

Table 1.

Incremental Vehicle Change for Area A

	Year	Maricopa & Yavapai	Pinal	Number of Vehicles
Current	1998	12,952	40,958	12,952
Projected	1999	13,341	42,187	13,341
	2000	13,741	43,452	13,741
	2001	14,153	44,756	58,909
	2002	14,578	46,099	60,676

Table 1 shows that fewer than 15,000 additional vehicles will be tested in 1999 and 2000, but the number more than quadruples in the years 2001 and 2002 when Pinal County vehicles are added to the testing program. The projected additional vehicles to be tested are based on the assumption that the number of vehicles in area A will increase at an annual rate of 3% per annum, based on the average annual rate of increase in the number of registered vehicles projected by Sierra Research.

Exemption from Testing of Current Model Year Plus 4 Vehicles -- Prior to the passage of SB 1427, new vehicles were exempt from the emissions testing program for 1 year. SB 1427 expanded the exemption to include those manufactured in the current year and the 4 prior model years. Although these vehicles are exempt, owners are given the option to have their vehicles tested if they so choose. ADEQ has estimated on the basis of past experience that about 3% of owners of exempt vehicles will choose to take the test.

Fleet Permits -- Fleet vehicles that are of the current model year plus 4 will be exempt from emissions testing. Many new car dealers will see a major decline in their expenditures associated with emissions testing and, in a few instances, repair. A number of car dealers have already withdrawn their fleet permits due to the exemption provision of this rule. This exemption-caused reduction in vehicles will decrease the COI fees normally collected by ADEQ for implementation of the program. Private sector (non-government) vehicle owners with fleet permits used to pay \$5 to ADEQ for a COI issued to every inspected vehicle in the fleet. COI revenues in fiscal year ending (FYE) 1998 totaled \$808,145 for 161,629 certificates. The corresponding amount for FYE 1999 is \$640,117.20 for 101,594 COIs representing a revenue decrease of 20.8%. Revenue from new car dealers comprised 73.1% of the total in FY 1998, but 65.0% in 1999. Beginning January 1, 1999, COI fees increased to \$6.60 in area A and \$11.60 in area B. The disparity in fees charged in area A and area B reflects the economies of scale achieved for area A.

Currently, there are 208 fleets permitted by the VEI Section, a decrease of 10.7% from the 233 that were permitted last year. 40 of the current permitted fleets are government-operated. Of the current 168 private sector fleets, more than half (92 or 54.7%) are new car dealers, 55 are used car dealers and 21 are diesel fleets. The number of diesel fleets dropped by 11 from last year's 32. After August 1998, 25 private fleet dealers took advantage of the exemption which caused the decline in COI sales. However, this revenue loss will be partially offset by the Department's collection of COI fees from government fleet operators, estimated to be around \$126,000 annually.

Waiver Recipients from 1997 onward will be eligible for the Repair Grant Assistance Program -- Since the beginning of the IM240 test program, owners of failed vehicles, who are also current recipients of food stamps as determined by the Arizona Department of Economic Security (ADES), have been eligible for the VEI repair grant assistance program. The number of grant recipients and the amounts disbursed for approved repairs have been relatively small. There were a total of 188 grantees from 1995 through April 1999, that involved vehicle repairs totaling \$20,001.92, or an average repair cost of \$106.39. The repair grant fund is capped at \$50,000 annually.

The demands on the State subsidy for this program could increase significantly because of a new provision of this rule enabling all waiver recipients from 1997 onward to be eligible for repair grants if their vehicles fail the emissions test. From January 1, 1997, through May, 1999, VEI Section staff have issued 10,442 waivers (an average of 360 monthly). Assuming that the average monthly number of waivers are issued between June and December, 1999, a total of 12,962 waivers will have been issued by the end of the year. It is highly conceivable that some waiver recipients since 1997 have taken steps on their own to fix their vehicles and attain compliance. It is also conceivable that the majority did not, and will therefore be eligible for repair grants. If the average repair grant per vehicle is still the going market rate (\$106.39) to repair failed vehicles, the

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total repair cost could be \$1.4 million. But since the grant money is capped at \$50,000 annually, only about 470 (3.6%) of eligible vehicles will be able to obtain assistance during the 1st year.

Waivers Denied to Gross Polluting Vehicles -- Legislation enacted in 1998 prohibited the issuance of a waiver to a vehicle failing the emission inspection at more than twice the standard. Since that provision was implemented, approximately 25% of vehicles failing the waiver inspection were denied in area A and 54% were denied in area B because their emissions were greater than twice the standard. A possible explanation could be the types of emissions tests used: the less vigorous idle and loaded tests (not the IM240 transient loaded test) are used in area B; whereas in area A, more rigorous tests are used.

Vehicle owners who apply for a waiver comprise only a small fraction (about 4% in 1998) of the total initial emissions tests conducted, since the vast majority of vehicles (84.3% in Maricopa) passed the initial test or subsequent re-tests. Vehicles that fail the initial test are then subjected to repairs and are given a free re-test. If they fail the free re-test, vehicle owners have the option to either have more repairs done and do another (paid) re-test, or apply for a waiver. Waivers are granted or denied depending on whether the eligibility requirements for A.R.S. § 49-542 are met by the vehicle owner.

The proposed rule requires that no waiver may be granted if emissions from a failing vehicle are more than twice the standard, even if the vehicle owner has carried out all appropriate measures consistent with A.R.S. § 49-542. This means that VEI staff will issue more waiver denials (that is, grant fewer waivers) and more vehicle owners will be required to repair their vehicles. On the basis of the limited data collected in areas A and B, and assuming that the same x failure rates apply, ADEQ staff will issue about 3,400 waiver denials for the 2x standard annually. More than 2/3 of these will be in area A and the remainder, in area B. On an annualized basis, and assuming the average cost to repair (as compiled by the State's contractor in 1998) still holds true, the incremental cost to vehicle owners or to manufacturers (if the vehicle is still under warranty) for this portion of the rule is \$401,000.

One-Time Only Waivers -- In addition to the inability of an owner to obtain a waiver for a failing vehicle if it emits more than 2 times the standard, the waiver may be granted only once during the vehicle's life. On January 1, 1997, ADEQ implemented the 1-time only waiver according to A.R.S. § 49-542(d). Prior to that date, it was possible for multiple waivers to be issued to a specific vehicle if the eligibility requirements were met at subsequent testing dates. Between 1996 and 1997, the number of waivers granted in areas A and B declined by 118%, from 16,665 to 7,661. Area A accounted for 76% of the decline. The proposed rule will officially eliminate multiple waivers to make the Department's rules consistent with statute. Because an owner may take advantage of a waiver only once, there could continue to be a further reduction in the number of waivers granted as a result of this requirement; however, with implementation of IM147, and a higher failure rate, waiver requests could increase.

Waiver Denials Due to Inoperable Catalytic Converters -- Finally, the number of waivers issued by the Department are bound to decrease due to test failures caused by inoperable catalytic converters. VEI staff estimate that about 40% of the vehicles that meet all other waiver requirements will be denied due to malfunctioning catalytic converters. Vehicle owners will be required to replace them, and manufacturers, repair shop owners and the general public will benefit from this rule requirement.

Remote Sensing Program -- In 1993, the Arizona Legislature amended A.R.S. § 49-542 with the addition of 49-542.01, "Random on-road testing; notification; testing requirements; contingency." This legislation mandated the Department to operate a random on-road testing program in area A as 1 of the emissions control measures. This program was 1st implemented in 1995. In October 1996, ADEQ implemented a carbon monoxide contingency measure by authority of A.R.S. § 49-542.01(E). This eliminated the requirement that a high-emitting vehicle be identified twice by a remote sensing unit before a vehicle owner is sent a notification requiring the vehicle to be emissions tested. Now, a high-emitting vehicle has to be identified only once for a notification to be sent. This contingency measure caused the notification rate to increase more than sevenfold from an average of 408 notifications to 2,964 notifications annually. The effect of this change has been to speed up the emissions testing and repair cycle so that more efficient emissions reduction can be achieved.

In 1998, the Legislature passed SB 1007 that required ADEQ to charge fees that would fully fund the various programs of the VEIP. As a result, all emission test fees for required noncyclic I/M tests (that is, those not conducted for the purpose of vehicle registration renewal) must now be paid by vehicle owners. Currently, all vehicles identified by the remote sensing program are referred to an ADEQ waiver facility for testing without any charge. However, when these vehicles are tested at an I/M contractor facility, and if the same number of notices are sent out annually, test fees payable to the Department could reach a maximum of \$50,680 annually for approximately 2,371 notifications. These noncyclic tests constitute 80% of the estimated 2,964 notifications sent out annually by the Remote Sensing Program. While 71% of the 2,371 notifications are for vehicles that are subject to the biennial transient loaded emissions test, the remaining 29% are for vehicles subject to the annual loaded test or idle test. The fee estimate for the remote sensing program reflects the fee structure that is now in place. After July 1, 2000, the test fees will reflect whatever is charged for the appropriate emissions test, as negotiated by the Department and the State contractor.

b) ADOT Motor Vehicle Division -- The impact on the Department of Transportation MVD is slight. Their vehicle registration process has been modified to include exempted vehicles and to expand the registration list to include all nonexempt vehicles in the expansion areas of Maricopa, Yavapai and Pinal Counties.

c) Other State Agencies -- Other state agencies that are fleet operators, like the Arizona Department of Corrections (ADOC), ADOT and the Arizona Department of Administration (ADOA) will pay COI fees.

II. Costs and Benefits to Political Subdivisions of the State

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Political subdivisions of the State such as counties, school districts and municipalities are government fleet operators, and as such, their vehicles will be subjected to the same emissions testing for as long as they are registered within the boundaries of area A and area B. Because these rules apply equally to all vehicle owners, whether they are private or public entities, owners of vehicles manufactured in the current model year plus 4 will enjoy the same exemption. Expenditures for the testing of all nonexempt vehicles, and the repair of failed vehicles in government-operated fleets will be borne by the respective owners.

The biggest impact these rules will have on political subdivisions of the State is that government fleet operators who hold permits to self-inspect will be required to pay COIs. Previously, government permitted fleet operators were exempt from paying for COIs. Table 2 shows the current number of vehicles owned by government fleet operators in area A and area B. Maricopa and Pima Counties own about 30.6% of government fleet vehicles, while the State owns just under 23%. The remainder are divided about evenly between municipalities, the federal government, school districts and Salt River Project. The table also shows that slightly less than \$126,000 in annual COI fees will be payable to ADEQ by government fleet operators. If the number of vehicles change, the fees will vary accordingly. This is part of the effort to make all vehicle owners, whether private or public, pay for the full costs of the program.

Table 2.			
Number of Vehicles in Permitted Government Fleets			
Ownership	Area A	Area B	Total
State	1,035	1,966	3,001
Federal	248	1,354	1,602
Counties	1,465	2,547	4,012
Municipalities	550	1,246	1,796
School Districts	452	760	1,212
Special Dist. (SRP)	1,478		1,478
Total:	5,228	7,873	13,101
Unit Fees:	\$6.60	\$11.60	
Payable:	\$34,504.80	\$91,326.80	\$125,831.60

III. Costs and Benefits to Private Businesses, including Small Businesses

Automotive Technicians, Mechanics and Vehicle Repair Shop Owners -- Private sector businesses in the vehicle repair industry are likely to benefit tremendously from this rule. An increase in the vehicle failure rates is anticipated as a result of implementing the IM147 test protocol, as well as significant increases in waiver denials issued by VEIP staff. All failed vehicles will require repairs and the primary beneficiaries of this requirement are people employed in vehicle repair businesses. In the 1995 economic census, the U.S. Bureau of the Census recorded 3,104 Arizona business establishments in the vehicle repair industry employing 21,427 people with a combined annual payroll of \$404.2 million. More than 3/4 (77.6%) of these establishments are located in Maricopa and Pima counties.

Tables 3 and 4 project the difference in failure rates by vehicle class between the current IM240 and the proposed IM147, based on data from the Sierra Research studies. As anticipated, both test protocols indicate a relatively high correlation between the age of the vehicle and emissions failure rates. But the data also show that failures from the IM-147 test are expected to be about 7 percentage points higher than those from the IM-240.

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Table 3.				
1998 Maricopa County IM-240 Failure Rates				
by Vehicle Class				
	LDV	LDT1	LDT2	ALL
1981-85	38.6%	19.8%	24.6%	32.8%
1986-89	16.6%	13.8%	14.7%	15.7%
1990-93	8.0%	7.6%	6.5%	7.8%
1994+	1.1%	1.1%	1.0%	1.1%
Total:	13.0%	9.0%	9.1%	11.6%

LDV refers to “light duty vehicles”, mainly passenger cars; and LDT1 and LDT2 refers to categories of light duty trucks.

Table 4.				
Projected IM-147 Failure Rates by Vehicle Class				
	LDV	LDT1	LDT2	ALL
1981-85	42.6%	44.2%	50.3%	43.5%
1986-89	26.0%	25.6%	23.0%	25.7%
1990-93	8.1%	7.4%	11.8%	8.2%
1994+	1.4%	1.1%	1.1%	1.3%
Total:	19.4%	16.9%	18.0%	18.6%

Based on emissions test failure statistics for calendar year 1997, vehicle owners spent more than \$27 million to repair failing vehicles, assuming all these failures were fixed at the annual repair average cost for 1997 provided by the VEIP contractor. 72% of the failures were in area A. The number of repairs carried out may be greater than the number of repaired vehicles because some vehicles are known to fail more than once. If the above failure rates are applied to 1998 MVD-registered vehicles, and adjusting for new and newer vehicle exemptions, the incremental increase in revenue for Maricopa County repair businesses is estimated at \$7.9 million. If vehicle repairs due to waivers denied for all reasons are added, the estimate increases by about \$681,000. Repairs for diesel vehicles and tampering are not included in the estimate, since failure rates data for heavy duty diesel vehicles with gross vehicle weight ratings of greater than 8,500 lbs. are not available.

Manufacturers and Distributors of Testing Equipment and Vehicle Spare Parts and Supplies -- The economic impact to the manufacturers and distributors of vehicle parts are included in the estimate of the added business that will accrue to vehicle repair shops indicated above. The rule will also increase the purchase of selected vehicle replacement parts and components. For example, VEI staff estimate that, as a result of this rule, approximately 40% of vehicles that meet all other waiver requirements (an estimated 2,100 in 1997) will have failing catalytic converters. These will require replacements to attain compliance. Currently, the average cost of catalytic converters ranges from a low of \$120 to a high of \$175. Assuming all the catalytic converter failures in 1997 were replaced, and using the midpoint of the price range, an additional \$310,000 would have been spent in area A and area B. The estimate is only for parts and does not include labor.

Private businesses will also benefit from expenditures by fleet permit holders to purchase new equipment such as scan tools, digital volt ohm meters and pressure test equipment for the Gas Integrity Test.

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IV. Costs and Benefits to Residents and Consumers --

Savings in time and effort due to exemptions -- Owners of current model year plus 4 vehicles are exempt from emissions testing, unless failing vehicles from this group are identified by the remote sensing program. If this rule were in place in 1998, a total of 805,355 vehicles or 28.2% of those registered in Maricopa and Pima counties, would have been exempt from testing during the entire calendar year. This means that starting next year, owners of exempt vehicles may choose to forego the test and be spared the time and effort it takes to have their vehicles emissions tested. The exemption represents an increase in efficiency of the emissions testing process, since the vast majority of vehicles in this category (about 98.5%) pass the test, and therefore may be excluded from testing without adversely affecting air quality.

Air Quality Benefits -- All residents and visitors to area A will benefit from this modified VEI program because of cleaner air. Air pollution has adverse impacts on human health and welfare, principally through respiratory-related diseases and ailments. Air pollution also damages agricultural crops and has other negative effects associated with reduced visibility and ecosystem changes. Metropolitan Phoenix (area A) has been declared a serious nonattainment area by EPA. The problem is compounded by a very high population growth rate in Maricopa County relative to the growth occurring in other Arizona counties and in most states. This growth is due mainly to in-migration and increased business activity.

The inference is that there has been, and will continue to be, a corresponding growth in the vehicle fleet numbers as well as vehicle miles traveled, with the County's transportation infrastructure barely able to keep up with the growth. To mitigate the problem, various strategies to reduce emissions from motor vehicles are being implemented by this rule. ADEQ Air Quality Assessment Section staff calculated the emissions reduction from criteria pollutants expected to occur from the various strategies contained in the rule. The reductions are expressed in metric tons per year for carbon monoxide (CO), volatile organic compounds (VOCs), nitrogen oxides (NOx), and particulate matter (PM10), with specific assumptions about vehicle failures, repairs, and vehicle miles traveled. Table 7 below shows that more than 90% of the emissions reductions are expected to occur for CO, less than 9% for VOCs, and 1% for NOx. Many pollutants, including NOx and VOCs, are precursors for the formation of ozone and particulates; thus, emissions reductions for these will yield air quality benefits beyond those directly associated with reduced concentrations of the individual pollutants themselves. The percentage reductions for PM10 are minimal. Furthermore, 78.9% of the emissions benefits will result from implementation of the IM147 test protocols.

Table 7.

Projected Emissions Reductions

(in metric tons per year)

	CO	VOC	NOx	PM10	Total
A. IM-147 Test	22,075.20	2,336.00	116.80		24,528.00
B. Area A Expansion	2,727.00	146.00	87.60	0.99	2,961.59
C. Replacing Cat. Conv.	131.80	20.60	43.70		196.10
D. One-Time Waiver	1,638.85	105.85	76.65		1,821.35
E. Waiver Denial*	166.08	59.13	1.46		226.67
F. Remote Sensing	1,336.00	0.00	0.00		1,336.00
Total:	28,074.93	2,667.58	326.21	0.99	31,069.71
Percent:	90.4%	8.6%	1.0%	0.003%	100.0%

*Gross Polluters

Reduction of Rule Impacts on Small Businesses

The legislation pertaining to this rule requires vehicle owners to pay for the full costs of implementing, administering and enforcing the VEIP. The major cost impacts will be on individual vehicle owners as well as fleet operators, private and public. The anticipated cash flows that will occur with implementation of this rule will be primarily from vehicle owners to small businesses in the vehicle repair industry. Therefore, small businesses will be the major economic beneficiaries, although the

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primary intent of this rule is to address public health and other concerns stemming from air pollution. Almost all (99.5%) vehicle repair business establishments in Arizona meet the statutory definition of small business. Less than one-half of 1% (0.48%) are "large" businesses, using the employment-size criterion. Positive economic impacts will also be experienced by manufacturers and distributors (and their suppliers) of spare parts and other supplies that will be needed for vehicle repair.

9. 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, Economist, Rule Development Section
Address: Department of Environmental Quality
3033 N. Central
Phoenix, AZ 85012-2809
Telephone: (602) 207-4435 (Any extension may be reached in-state by dialing (800) 234-5677, and asking for that extension)
Fax: (602) 207-2251

10. 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:

Date: September 14, 1999
Time: 1:30 p.m.
Location: Department of Environmental Quality, Room 1706
3033 N. Central
Phoenix, AZ

Date: September 15, 1999
Time: 11 a.m.
Location: State Office Bldg, Room 446
400 W. Congress
Tucson, AZ

Nature: Public hearings on the proposed rules

Close of comment: September 17, 1999

(Please call (602) 207-4795 for special accommodations pursuant to the Americans with Disabilities Act.)

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 locations in the rules:

Not applicable.

13. The full text of the rules follows:

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 2. DEPARTMENT OF ENVIRONMENTAL QUALITY

AIR POLLUTION CONTROL

ARTICLE 10. MOTOR VEHICLES; INSPECTION AND MAINTENANCE

Section

R18-2-1001. Definitions
R18-2-1002. Reserved
R18-2-1003. Vehicles to be Inspected by the Mandatory ~~Vehicle~~ ~~Vehicle~~ Emissions Inspection Program
R18-2-1004. ~~State Inspection Requirements~~ Reserved
R18-2-1005. Time of Inspection
R18-2-1006. Emissions Test Procedures
R18-2-1007. Evidence of Meeting State Inspection Requirements
R18-2-1008. Procedure for Issuing Certificates of Waiver

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- R18-2-1009. Tampering Repair Requirements
- R18-2-1010. Low Emissions Tune-up, Emissions, and Evaporative System Repair
- R18-2-1011. Vehicle Inspection Report
- R18-2-1012. Inspection Procedures and Fee
- R18-2-1013. Reinspections
- R18-2-1014. Vehicle Repair Grants
- R18-2-1015. On-road Testing; High Emissions Identifications
- R18-2-1016. Licensing of Inspectors
- R18-2-1017. Inspection of Governmental Vehicles
- R18-2-1018. Certificate of Inspection
- R18-2-1019. Fleet Station Procedures and Permits
- R18-2-1020. Licensing of Third Party Agents; Issuing Alternative Fuel Certificates ~~Reserved~~
- R18-2-1022. Procedure for Waiving Inspections Due to Technical Difficulties
- R18-2-1023. Certificate of Exemption for Out-of-State Vehicles
- R18-2-1025. Inspection of Contractor's Equipment and Personnel ~~State Stations~~
- R18-2-1026. Inspection of Fleet Stations
- R18-2-1027. Registration of Emission Analyzers and Opacity Meters
- R18-2-1028. Certification of Users of Registered Analyzers and Analyzer Repair Persons
- R18-2-1029. Vehicle emission control devices
- R18-2-1030. Visible emissions; mobile sources
- R18-2-1031. Standards for Evaluating ~~Aftermarket~~ the Oxidation Efficiency of a Catalytic Converters Converter
- Table 3. Emission Standards - Biennial Tests
- Table 4. Transient Driving Cycle
- Table 6. Emission Standards - Remote Sensing Identifications

ARTICLE 10. MOTOR VEHICLES; INSPECTION AND MAINTENANCE

R18-2-1001. Definitions

In this Article, unless the context otherwise requires:

1. Abbreviations and symbols used herein shall be as follows:
 - a. "A/F" means air/fuel.
 - b. "CID" means cubic inches displacement.
 - c. "CO" means carbon monoxide.
 - d. "CO(2)" means carbon dioxide.
 - e. "EGR" means exhaust gas recirculation.
 - f. "GVWR" means gross vehicle weight rating.
 - g. "HC" means hydrocarbon.
 - h. "HP" means horsepower.
 - i. "LNG" means liquefied natural gas.
 - j. "LPG" means liquid petroleum gas.
 - k. "LVW" means loaded vehicle weight.
 - l. "MPH" means miles per hour.
 - m. "MVD" means the Motor Vehicle Division of the Arizona Department of Transportation.
 - n. "NDIR" means nondispersive infrared.
 - o. "NO(x)" means the sum of nitrogen oxide and nitrogen dioxide.
 - p. "%" means percent.
 - q. "OEM" means original equipment manufacturer.
 - r. "PROM" means programmable read only memory.
 - s. "PCV" means positive crankcase ventilation.
 - t. "PPM" means parts per million by volume.
 - u. "RPM" means revolutions per minute.
 - v. "VIN" means vehicle identification number.
 - w. "VIR" means vehicle inspection report.
2. "Annual test" means any vehicle emissions test which is not a biennial test.
3. "Apportioned vehicle" means a vehicle that is subject to the proportional registration provisions of A.R.S. § 28-2233.
- 4.3. "Area A" has the same meaning as in A.R.S. § 49-541. ~~"Area A" means a carbon monoxide nonattainment area in a county with a population of one million two hundred thousand or more persons as determined by the most recent United States decennial census.~~

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- 5.4. "Area A vehicle" means a motor vehicle subject to emission inspection ~~and that is for which~~ ~~one or more of the following is true:~~
- a. ~~Registered~~ ~~It is registered~~ or to be registered within area A; ;
 - b. ~~Owned~~ ~~It is owned~~ by or leased to a person having a valid fleet permit and customarily kept in area A; ;
 - c. ~~A~~ ~~It is a~~ governmental vehicle customarily kept in area A; ;
 - d. ~~Used~~ ~~It is used~~ to commute to the driver's principal place of employment located in area A; ; ~~or~~
 - e. ~~Parked, will be parked, It is or will be parked~~ or is the subject of a parking permit application at an institution which is both located in area A and subject to the requirements of A.R.S. §§ 15-1444(C) or 15-1627(G).
- 6.5. "Area B" ~~has the same meaning as in A.R.S. § 49-541, means a carbon monoxide nonattainment area in a county with a population in excess of four hundred thousand but fewer than one million two hundred thousand persons as determined by the most recent United States decennial census.~~
- 7.6. "Area B vehicle" means a motor vehicle subject to emission inspection ~~and that is:~~ ~~for which one or more of the following is true:~~
- a. ~~Registered~~ ~~It is registered~~ or to be registered within area B; ;
 - b. ~~Owned~~ ~~It is owned~~ by or leased to a person having a valid fleet permit and customarily kept in area B; ;
 - c. ~~A~~ ~~It is a~~ governmental vehicle customarily kept in area B; ;
 - d. ~~Used~~ ~~It is used~~ to commute to the driver's principal place of employment located in area B; ; ~~or~~
 - e. ~~Parked, will be parked, It is or will be parked~~ or is the subject of a parking permit application at an institution which is both located in area B and subject to the requirements of A.R.S. §§ 15-1444(C) or 15-1627(G).
- 8.7. "Biennial test" means the transient loaded emission test and evaporative system tests required ~~under pursuant to~~ R18-2-1006(E)(2).
9. "Calibration gas" ~~means a gas with assigned concentrations of CO, hexane, or CO(2) that is used by a state inspector to check the accuracy of emissions analyzers.~~
- 10.8. "Certificate of compliance" means a serially numbered document issued by a state station at the time of inspection indicating that the vehicle has met the emissions standards.
- 11.9. "Certificate of exemption" means a serially numbered certificate issued by the Director exempting a vehicle which is not available within the state for the inspection during the 90 days ~~before~~ ~~prior to~~ the emissions compliance expiration date.
- 12.10. "Certificate of inspection" means a serially numbered document ~~issued~~ ~~as may be prescribed~~ by the Director, indicating that a vehicle has been inspected ~~under pursuant to the provisions of~~ A.R.S. § 49-546 and has passed inspection.
- 13.11. "Certificate of waiver" means a serially numbered document issued by the Department or a fleet inspector other than an auto dealer licensed to sell used motor vehicles ~~under pursuant to~~ Title 28 of the Arizona Revised Statutes indicating that the requirement of passing reinspection has been waived for a vehicle ~~under pursuant to~~ A.R.S. § 49-542.
- 14.12. "Conditioning mode" means either a fast idle condition or a loaded condition as defined in this Section.
- 15.13. "Constant ~~4-wheel~~ ~~four-wheel~~ drive vehicle" means any ~~4-wheel~~ ~~four-wheel~~ drive vehicle with ~~4~~ ~~four~~ wheels which cannot be converted to ~~2-wheel~~ ~~two-wheel~~ drive except by disconnecting ~~1~~ ~~one~~ of the vehicle's drive shafts.
- 16.14. "Constant volume sampler" means a system that dilutes engine exhaust to be sampled with ambient air so that the total combined flow rate of exhaust and dilution air mix is nearly constant for all engine operating conditions.
- 17.15. "Contractor" means a person, business firm, partnership, or corporation with whom the Director has a contract which provides for the operation of ~~1~~ ~~one~~ or more official emissions inspection stations.
- 18.16. "Curb idle test" means an exhaust emissions test conducted with the engine of the vehicle running at the manufacturer's idle speed ~~±~~ ~~plus or minus~~ 100 RPM but without pressure exerted on the accelerator.
- 19.17. "Curb weight" means a vehicle's unloaded weight without fuel and oil plus 300 pounds.
- 20.18. "Dealer" means a person or organization licensed by the Arizona Department of Transportation as a new motor vehicle dealer, used motor vehicle dealer, or motorcycle dealer.
- 21.19. "Department" means the Department of Environmental Quality.
- 22.20. "Director" means the Director of the Department of Environmental Quality.
- 23.21. "Director's certificate" means a serially numbered document issued by the Director in special circumstances where the Director deems it inappropriate for the vehicle to show evidence of meeting the minimum standards for registration or reregistration ~~under R18-2-1019 or pursuant to~~ R18-2-1022 ~~or R18-2-1023.~~
- 24.22. "Electrically-powered vehicle" means a vehicle that both uses electricity as the means of propulsion and does not require the combustion of fossil fuel within the confines of the vehicle in order to generate electricity.
- 25.23. "Emissions compliance expiration date" means:
- a. ~~Each~~ ~~each~~ registration expiration date for vehicles subject to annual tests; and
 - b. ~~The for vehicles subject to biennial tests means the~~ registration expiration date in the ~~2nd~~ ~~second~~ year after the initial biennial test required ~~under pursuant to~~ this Article or ~~as provided in~~ R18-2-1005(C) R18-2-1005(B) for vehicles subject to biennial tests.

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- ~~26.24~~: “Emissions inspection station permit” means a certificate issued by the Director authorizing the holder to perform ~~vehicle vehicular~~ inspections ~~under pursuant to~~ this Article.
- ~~27.25~~: “Exhaust emissions” means products of combustion emitted into the atmosphere from any opening downstream of the exhaust ports of a motor vehicle engine.
- ~~28.26~~: “Exhaust tail pipes” means the pipes that attach to the muffler and exit the vehicle.
- ~~29.27~~: “Fast idle condition” means to operate a vehicle by running the engine at 2,500 ~~2500~~ RPM, ~~± plus or minus~~ 300 RPM, for up to 30 seconds, with the transmission in neutral, to ready the vehicle for a subsequent curb idle test.
- ~~30.28~~: “Fast pass ~~or fast fail~~ algorithm” means a procedure in a testing system that can logically determine whether or not a vehicle will pass or fail the biennial test before the test is over.
- ~~29~~: “~~Field calibration gas~~” means ~~a gas with assigned concentrations of CO, hexane, or CO(2) that is used by a state inspector to check the accuracy of emissions analyzers used by state stations, fleet stations, and vehicular repair facilities.~~
- ~~31.30~~: “Fleet emissions inspection station” or “fleet station” means any inspection facility operated under a permit issued ~~under pursuant to~~ A.R.S. § 49-546.
- ~~32.31~~: “Fuel” means any material that is burned within the confines of a vehicle in order to be used as the means of propelling the vehicle.
- ~~33.32~~: “Four-stroke vehicle” means a vehicle equipped with an engine that requires 2 ~~two~~ revolutions of the crankshaft for each piston power stroke.
- ~~34.33~~: “Golf cart” means a motor vehicle ~~that which~~ has not less than 3 ~~three~~ wheels in contact with the ground, has an unladen weight less than 1,300 pounds, is designed to be and is operated at not more than 15 MPH ~~miles an hour~~, and is designed to carry golf equipment and persons.
- ~~35.34~~: “Governmental vehicle” means a registered motor vehicle exempt from the payment of a registration fee, or a federally owned or leased vehicle.
- ~~36.35~~: “Gross vehicle weight rating” (GVWR) means the maximum vehicle weight that the vehicle is designed for as established by the manufacturer.
- ~~37.36~~: “Gross weight” means the sum, measured in pounds, of the empty weight of a motor vehicle combination plus the weight of the maximum load to be carried thereon at any 1 ~~one~~ time, except that for tow trucks, gross weight means the sum of the empty weight of the tow truck plus the weight of operational supplies and equipment.
- ~~38.37~~: “Inspection” means the mandatory ~~vehicle vehicular~~ emissions inspection including the tampering portion.
- ~~39.38~~: “Inspection sticker” means a self-adhesive, serially numbered rectangular sticker indicating a governmental vehicle has met the state of Arizona emissions inspection requirements.
- ~~40.39~~: “Loaded condition” means to condition a vehicle by running the vehicle on a chassis dynamometer at a specified speed and load for up to 30 seconds to ready the vehicle for a subsequent curb idle test.
- ~~41.40~~: “Loaded cruise test” means an exhaust emissions test conducted on a chassis dynamometer ~~under as prescribed in~~ R18-2-1006(E)(1)(a) and (F)(2)(a).
- ~~42.41~~: “Mass emission measurement” means measurement of a vehicle's exhaust in mass units such as grams.
- ~~43.42~~: “Model year” means either the date of manufacture of the original vehicle within the annual production period of such vehicle as designated by the manufacturer or, if a reconstructed vehicle, the 1st ~~first~~ year of titling.
- ~~44.43~~: “MOL percent” means the percent, by volume, that a particular gas occupies in a mixture of gases at a uniform temperature.
- ~~45.44~~: “Motorcycle” means a motor vehicle, other than a tractor, having a seat or saddle for use of the rider and designed to travel on not more than 3 ~~three~~ wheels in contact with the ground.
- ~~46.45~~: “Motorhome” means a vehicle built on a truck or bus chassis and equipped as a self-contained traveling home.
- ~~47.46~~: “New aftermarket catalytic converter” or “new aftermarket converter” means a catalytic converter, except for an OEM, that meets the standards ~~under 40 CFR 86 defined in R18-2-1031(A).~~
- ~~47~~: “~~New aftermarket fuel filler neck inlet restrictor~~” means a fuel filler neck inlet restrictor, ~~except for an OEM, which is approved by the Department.~~
- ~~48~~: “~~Nonattainment areas~~” means ~~areas which have been designated by the Administrator of the Environmental Protection Agency, acting under pursuant to Section 107 of the Clean Air Act, 42 USC Section 7401 et seq., as exceeding national primary or secondary ambient air standards for carbon monoxide or ozone and designated as such in the State Implementation Plan submitted to the Environmental Protection Agency, except that “nonattainment area” does not include the area which the Environmental Protection Agency determined should be redesignated as an attainment area as printed in the Federal register, Volume 51, Number 149, Monday, August 4, 1986, Page 27843.~~
- ~~48.49~~: “Official emissions inspection station” means an inspection facility, other than a fleet emissions inspection station, whether placed in a permanent structure or in a mobile unit for conveyance among various locations within the state, for the purposes of conducting inspections ~~under pursuant to~~ A.R.S. § 49-542.
- ~~49.50~~: “Opacity” means the degree of ~~absorption obscuration~~ of transmitted light.
- ~~50.51~~: “Operational air pump” means an air injection system (AIS) to supply additional oxygen (air) into the exhaust system to promote further oxidation of HC and CO gases and to assist in catalytic reaction.

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~~51.52:~~“Person” means the federal government, state or any agency or institution thereof, any municipality, political subdivision, public or private corporation, individual, partnership, association, or other entity, and includes any officer or governing or managing body of any municipality, political subdivision, or public or private corporation.

~~53:~~ “Prorate vehicle” means any vehicle whose licensing fee in the state is prorated by its estimated usage in the state.

~~52.54:~~“Reconditioned OEM catalytic converter” or “reconditioned OEM converter” means a used OEM reconditioned equivalent or an OEM converter which has had the pellets replaced with new or used OEM equivalent pellets and that also meets the standards under 40 CFR 86 defined in R18-2-1031(B).

~~53.55:~~“Recognized repair facility” means a going concern with an Arizona transaction privilege (sales) tax license whose primary purpose is vehicle repair, and having at least ~~1~~ one employee with a nationally recognized certification for emission-related diagnosis and repair.

~~54.56:~~“Reconstructed vehicle” means ~~either of the following:~~

a. A reconstructed special as identified by the code letters “SP” on the portion of the vehicle's Arizona registration card or Arizona certificate of title that is reserved for identification of the vehicle's style; or

b. A vehicle in which the vehicle style is not shown on the Arizona registration card or certificate of title, and the original manufacturer of the complete vehicle cannot be identified from the body.

~~55.57:~~“Standard gases” means gases maintained as a primary standard for determining the composition of working gases, ~~field~~ calibration gases, or the accuracy of analyzers.

~~56.58:~~“State inspector” means an employee of the Department designated to perform quality assurance or waiver functions under pursuant to this Article.

~~57.59:~~“State station” means an official emissions inspection station operated by a contractor.

~~58.60:~~“Tampering” means removing, defeating, or altering an emissions control device which was installed at the time the vehicle was manufactured. For the purposes of this Article, defeating shall include failure to repair any malfunctioning emission control system or device.

~~59.61:~~“Two-stroke vehicle” means a vehicle equipped with an engine that requires ~~1~~ one revolution of the crankshaft for each power stroke.

~~60.62:~~“Unloaded fast idle test” means an exhaust emissions test conducted with the engine of the vehicle running at ~~2,500~~ 2500 RPM.

~~61.63:~~“Vehicle” means any automobile, truck, truck tractor, motor bus, or self-propelled or motor-driven vehicle registered or to be registered in this state and used upon the public highways of this state for the purpose of transporting persons or property, except implements of husbandry, roadrollers, or road machinery temporarily operated upon the highway.

~~62.64:~~“Vehicle ~~Vehicle~~ emissions inspector” means an individual who has been licensed by the Director to perform vehicle ~~vehicular~~ emissions inspections for this program.

~~63.65:~~“Working gases” means gases maintained by a facility to perform periodic calibration of emissions analyzers.

R18-2-1003. Vehicles to be Inspected by the Mandatory Vehicle ~~Vehicular~~ Emissions Inspection Program

A. The following vehicles shall be inspected according to this Article at a state station or a fleet station unless exempted by subsection (B):

1. Each vehicle to be registered or reregistered within area A or area B for highway use. For the purposes of this Article, registration within area A or area B ~~a vehicle emissions control area~~ shall be determined by the vehicle owner's permanent and actual residence. The permanent address in the MVD database shall be presumed to be the owner's permanent and actual residence. A post office box address listed on a title or registration document under A.R.S. § 28-2051(C) shall not be evidence of the owner's permanent and actual residence;
2. Each vehicle delivered to retail purchasers by dealers licensed to sell used motor vehicles for highway use under A.R.S. Title 28 and whose place of business is located in area A or area B;
3. Each vehicle registered outside area A and area B but used to commute to the driver's principal place of employment located within area A or area B; ~~and~~
4. Each vehicle owned by a person who is subject to A.R.S. §§ 15-1444(C) or 15-1627(G); and
5. Area A or area B vehicles located out of state for more than 90 days before vehicle registration expiration shall be emissions tested at an official emissions inspection testing center in that area. If no official emission testing program is available in the area for that vehicle, the vehicle shall meet the testing requirements under this Article within 15 calendar days upon returning to Arizona.

B. The following vehicles are exempt from the inspection requirements of this Article:

1. A vehicle manufactured in or before the 1966 model year;
2. A vehicle leased to a person residing outside area A and area B by a leasing company whose place of business is in area A or area B, except as otherwise provided in subsection (A)(3);
3. A vehicle sold between motor vehicle dealers;
4. An electrically-powered vehicle;
5. An apportioned vehicle;

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6. A golf cart;
 7. A vehicle with an engine displacement of less than 90 cubic centimeters; ;
 - ~~8. A new vehicle originally registered at the time of initial retail sale and titling in this state under A.R.S. § 28-2153;~~
 - ~~9.~~ A vehicle registered at the time of change of name of ownership except when the change in registration is accompanied by required fees for the year following expiration of the prior registration or the change results from the sale by a dealership whose place of business is located in area A or area B;
 - ~~9.10.~~ A vehicle for which a current certificate of exemption or Director's certificate has been issued; ~~and~~
 - ~~10.~~ ~~H.~~ A diesel-powered vehicle in area A applying for registration or reregistration 33 months or less after the date of initial registration as a new vehicle; ; ~~and~~
 11. Vehicles of a model year the same as, or newer than, the current calendar year and vehicles of the prior 4 model years, except:
 - a. Reconstructed vehicles; and
 - b. Vehicles requiring emissions testing under R18-2-1015.
- C. Governmental vehicles operated in area A or area B and not exempted by this Article shall be emissions inspected according to R18-2-1017.

~~R18-2-1004. State Inspection Requirements~~

~~All vehicles required to be inspected by this Article shall pass inspection by meeting the requirements of R18-2-1006 unless waived pursuant to R18-2-1008.~~

R18-2-1004. Reserved

R18-2-1005. Time of Inspection

- A. Area B vehicles, area A vehicles subject to an annual test, and vehicles sold or offered for sale by dealers required to be inspected ~~under pursuant to~~ R18-2-1003 shall be inspected at the following times:
1. For vehicles not covered by a fleet station permit, within 90 days ~~before prior to~~ each registration expiration date.
 2. For vehicles sold by a dealer licensed to sell used motor vehicles ~~under A.R.S. pursuant to~~ Title 28, whose place of business is located in area A or area B, ~~before prior to~~ delivery of the vehicle to the retail purchaser.
 3. For consignment vehicles offered for sale by a dealer licensed to sell used motor vehicles ~~under A.R.S. pursuant to~~ Title 28 whose place of business is located in area A or area B, ~~before prior to~~ delivery of the vehicle to the retail purchaser. Such consignment vehicles shall be inspected at a state station in conformance with R18-2-1006.
 4. For governmental vehicles; ;
 - a. ~~At~~ At ~~at~~ least once within 12 months following the applicable date of acquisition by the operating entity in area A or area B; ;
 - b. On or before the date of initial registration;; or
 - c. On or before the date of prior inspection.
 5. For vehicles owned by or leased to a person having a valid fleet station permit, at least once within each 12-month period following any original registration or reregistration.
 6. For vehicles that are being registered in area A or area B under conditions not specified in ~~subsections paragraphs~~ (1) through (5) ~~of this subsection~~, within 90 days ~~before prior to~~ registration.
 7. For vehicles registered outside area A and area B but used to commute to the driver's principal place of work located in area A or area B, upon vehicle registration or reregistration.
 8. For vehicles owned by persons subject to A.R.S. §§ 15-1444(C) or 15-1627(G), within 30 days following the date of initial registration at the institution located in area A or area B and annually thereafter.
 9. For vehicles issued a certificate of exemption under R18-2-1023, within 15 calendar days after returning to Arizona, unless an official emissions inspection document from the out-of-state emissions inspection station was submitted with the request for exemption.
- B. Area A vehicles subject to the biennial test shall be inspected at the following times:
1. For vehicles not covered by a fleet station permit, within 90 days ~~before prior to~~ the vehicle's emissions compliance expiration date.
 2. For governmental vehicles; ;
 - a. ~~At~~ At ~~at~~ least once within 24 months following the applicable date of acquisition by the operating entity in area A; ;
 - b. On or before the date of initial registration;; or
 - c. On or before the date of prior inspection.
 3. For vehicles owned by or leased to a person having a valid fleet station permit, at least once within each successive 24-month period following original registration.
 4. For vehicles registered outside area A but used to commute to the driver's principal place of work located in area A, upon vehicle registration and biennially thereafter.
 5. For vehicles owned by persons subject to A.R.S. §§ 15-1444(C) or 15-1627(G), within 30 days following the date of initial registration at the institution located in area A and biennially thereafter.

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6. For vehicles that are being registered as area A vehicles under conditions not specified in subsections paragraphs (1) through (5) ~~of this subsection~~, upon initial registration and within 90 days before ~~prior to~~ the vehicle's emissions compliance expiration date thereafter.
 7. For vehicles issued a certificate of exemption under R18-2-1023, within 15 calendar days after returning to Arizona unless an official emissions inspection document indicating compliance with the emissions requirements from the out-of-state emissions inspection station is submitted with the request for exemption.
- C. Vehicles registered in the portion of area A within Pinal County shall be exempt from the requirements of this Article until January 1, 2001. Effective January 1, 1995, area A vehicles subject to the biennial test that have VINs ending with an even digit shall have an emission compliance expiration date set to 24 months after the most recent registration or reregistration and shall be allowed to be reregistered with the same owner without an emissions test in 1995. Said vehicles shall be required to take the biennial test prior to reregistration in 1996. Vehicles with VINs ending in an odd digit shall have the vehicle's emission compliance expiration date set to 12 months after the most recent registration or reregistration and shall be required to take the biennial test prior to reregistration in 1995.
- D. Unless exempted by R18-2-1003(B), a used vehicle not registered as an area A or area B vehicle shall require the appropriate emission test before registration as an area A or area B vehicle.
- E. An area B vehicle that is being registered in area A shall require the appropriate annual or biennial test from area A before ~~prior to~~ registration even if the emissions compliance period for area B has not yet expired.
- F. New vehicles that are temporarily exempt from emission testing under R18-2-1003(B)(11) pursuant to R18-2-1003(B)(8), and are subject to either an annual or biennial test, shall be tested before registration in a calendar year that exceeds the model year by 5 years. have an emissions compliance expiration date of 12 months after the month of original registration.
- G. Nothing in this Section shall be construed to waive a late registration fee because of failure to meet inspection requirements by the registration deadline, except that motor vehicles failing the initial or subsequent test shall not be subject to a penalty fee for late registration renewal if both the original testing was accomplished before ~~prior to~~ the emissions compliance expiration date and the registration renewal is received by the Arizona Department of Transportation Motor Vehicle Division ~~in Pima County or the Maricopa County Assessor in Maricopa County~~ within 30 days of the original test.
- H. A vehicle subject to subsection (A)(1), (A)(6), (B)(1), or (B)(6) either paragraphs (1) or (6) of subsections (A) or (B) of this Section may be submitted voluntarily for inspection more than 90 days before the emissions compliance expiration date on payment of the prescribed inspection fee. Such voluntary inspection shall not be considered as compliance with the registration or reregistration requirement under ~~pursuant to~~ R18-2-1003.

R18-2-1006. Emissions Test Procedures

- A. Each vehicle inspected at a state station shall be visually inspected before the emissions test for the following unsafe or unstable conditions:
1. A fuel leak ~~in or around the engine area, fuel tank, or lines~~ which causes wetness or pooling of fuel;
 2. A continuous engine or transmission oil leak onto the floor;
 3. A continuous engine coolant leak onto the floor such that engine overheating has occurred or may will occur within a short time;
 4. The vehicle has a tire on a driving wheel with less than 2/32-inch tread, with metal protuberances, unmatched tire size, or with obviously low tire pressure, as determined by visual inspection, or any other condition that precludes a loaded test for reason of safety to personnel, equipment, or the vehicle; A worn tire with less than 2/32-inch tread remaining or which has cord showing, or a bulge, delamination, lump, or separation;
 5. An exhaust pipe that does not exit the rear or side of the vehicle to allow for safe exhaust probe insertion. An exhaust pipe on a diesel-powered vehicle that does not allow for safe exhaust probe insertion and attachment of opacity meter sensor units; ~~and~~
6. Improperly operating brakes;
7. Any vehicle modification, or mechanical condition which prevents dynamometer operation; and
86. Any other condition deemed unsafe by the inspector, such as loud internal engine noise or an obvious exhaust leak.
- B. A ~~vehicle mandatory vehicle~~ emissions inspection shall not be performed by an official emissions inspection station on any vehicle that is towing a heavily loaded trailer, carrying a heavy load, loaded with, or towing a trailer loaded with explosives, or loaded with any other hazardous material not used as fuel for the vehicle.
- C. Any vehicle found to be unsafe as determined by the visual inspection shall be rejected without an emissions test. Vehicle owners or drivers shall be notified of all unsafe conditions found on rejected vehicles. A fee shall not be charged if the vehicle is rejected at a state station. The emissions test shall not be conducted on a vehicle rejected for a safety reason or any other untestable condition until the cause for rejection is repaired.
- D. When conducting the emissions test procedure required by this Section, both of the following requirements shall be met:
1. All vehicles shall be tested in as-received condition, unless rejected under subsection subsections (A), or (B), or (C). The vehicle's engine shall be operating at normal temperature. The vehicle's engine shall not be overheating as indicated by a gauge, warning light, or boiling radiator, and all of the vehicle's accessories shall be turned off.

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2. Vehicles designed to operate with more than 1 fuel shall be tested on the fuel in use when the vehicle is presented for inspection, used by the vehicle at time of inspection.
- E. In area A, the inspection test procedures for all vehicles other than diesel-powered vehicles and vehicles held for resale by motor vehicle dealers with a fleet license shall conform to the following:
1. Vehicles manufactured with a model year of 1967 through 1980, all nonexempt vehicles with a GVWR greater than 8,500 ~~8500~~ pounds, and all reconstructed vehicles, except motorcycles and constant 4-wheel drive vehicles, are required to annually take and pass both a loaded cruise test and curb idle test, described as follows:
 - a. Loaded cruise test. The vehicle's drive wheels shall be placed on a dynamometer and the vehicle shall be operated according to Table 1 of this Article, in drive for automatic transmission or 2nd or higher gear for manual transmission. Overdrive shall not be used. All vehicles shall be driven by the inspector. HC and CO exhaust emissions concentrations shall be recorded after readings have stabilized or at the end of 90 seconds, whichever occurs first. After exhaust emissions have been recorded, engine speed shall be returned to idle for a curb idle test.
 - b. Curb idle test. The test shall be performed with the vehicle in neutral for 1981 and newer vehicles. For 1980 and older vehicles, the test shall be performed in neutral, except that if the vehicle has an automatic transmission, drive shall be used. Engine RPM shall be within ± 100 RPM of the manufacturer's specified idle RPM. HC and CO exhaust emissions concentrations shall be recorded after readings have stabilized, or at the end of 90 seconds, whichever occurs first. A CO₂ plus CO reading of 6% or greater shall be registered to establish test validity. A CO₂ plus CO reading of less than 6% shall be proof of exhaust sample dilution and the vehicle shall be rejected from further emissions inspection.
 2. Vehicles with a 1981 or newer model year and a GVWR of 8,500 ~~8500~~ pounds or less, except motorcycles, reconstructed vehicles, and until January 1, 2002 constant 4-wheel drive vehicles, are required to biennially take and pass a transient loaded emissions test, ~~an evaporative system purge test~~ and an evaporative system integrity test as follows:
 - a. The transient loaded emission test shall consist of 147 ~~240~~ seconds of mass emission measurement using a constant volume sampler while the vehicle is driven by an inspector through a computer-monitored driving cycle on a dynamometer with inertial weight settings appropriate for the weight of the vehicle. The driving cycle shall include the acceleration, deceleration, and idle operating modes required in Table 4. The 147 ~~240~~ second sequence may be ended earlier using fast pass or fast fail algorithms. A retest algorithm shall be used to determine if a test failure was due to insufficient vehicle preconditioning. As determined by the retest algorithm, up to 2 additional tests may be performed on a failing vehicle. Drive shall be used for automatic transmissions and 1st gear shall be used to begin for manual transmissions. ~~Overdrive shall not be used.~~ Exhaust emissions concentrations in grams per mile for HC, CO, NO_x and CO₂ shall be recorded continuously beginning with the 1st second. The inspector shall reject from testing vehicles with audible or otherwise detectable exhaust leaks.
 - b. ~~The evaporative system purge test procedure shall consist of measuring the total purge flow in standard liters occurring in the vehicle's evaporative system during the transient loaded emission test specified in subsection (a). The purge flow measurement system shall be connected to the purge portion of the evaporative system in series between the canister and the engine near the canister.~~
 - b.e. The evaporative system integrity test shall consist of the following steps in sequence:
 - i. Connect the test equipment to either the fuel tank vent hose at the canister or the fuel tank filler neck, ~~hose at the canister end.~~ The gas cap shall be checked to ensure that it is properly tightened, and shall be tightened if necessary.
 - ii. Pressurize the system to 14 ± 0.5 inches of water without exceeding 26 inches of water system pressure.
 - iii. Close off the pressure source, seal the evaporative system, and monitor pressure decay for up to 2 minutes.
 3. For vehicles required to take a biennial emissions test, all testing and test equipment shall conform to "IM240 & Evaporative Test Technical Guidance", EPA-AA-RSPD-IM-98-1, EPA, August 1998, except that the transient driving schedule in Table 4 shall be used, "High Tech I/M Test Procedures, Emission Standards, Quality Control Requirements, and Equipment Specifications Final Technical Guidance", ("High Tech I/M Final Technical Guidance"), EPA-AA-EPSP-IM-93-1, EPA, April 1994, incorporated by reference and on file with the Department and the Secretary of State. This incorporation by reference contains no future editions or amendments. A copy of this referenced material may be obtained at EPA's National Vehicle and Fuel Emissions Laboratory, 2000 Traverwood ~~2565 Plymouth Road,~~ Ann Arbor, MI 48105-2498. For vehicles required to take an annual emissions test, exhaust sampling shall conform to subsection (F)(6).
 4. All motorcycles and constant 4-wheel drive vehicles shall be required only to take and pass a curb idle test according to subsection (F)(1).
 5. The emissions pass/fail determination for all vehicles tested under subsection (E) shall be made as follows:
 - a. Vehicles tested under subsection (1), which do not exceed either the loaded cruise mode or curb idle mode HC and CO emissions standards listed in Table 2, shall be in compliance with minimum emissions standards con-

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tained in Table 2. The loaded cruise test standards specified in Table 2 shall apply to fleet vehicles tested with the ~~2,500~~ 2500 RPM unloaded fast idle test under R18-2-1019(A).

- b. Vehicles tested under subsection (E)(2) shall meet the standards in Table 3; and pass the evaporative system integrity test, ~~and pass the evaporative system purge test~~ as follows:
- i. Table 3 Standards. A vehicle shall meet either the composite standard for the whole test or the phase 2 standard for seconds ~~65-94~~ to ~~146-239~~. The Department may implement testing algorithms for fast pass, fast fail, fast pass, fast fail, or both, provided that the algorithms ~~are equivalent to or consistent with those listed in "High Tech IM Final Technical Guidance"~~ and are reliable in accurately predicting the final outcome of the entire cycle. The Department may adjust individual standards for a vehicle class or model year, if test data determine that a standard does not result in an optimal emissions level for correctly identifying passing or failing vehicles. The Department's determination and any adjusted standard shall be filed with the SOS (Secretary of State) office. Vehicles not meeting either the composite or phase 2 standard shall fail.
 - ii. Evaporative System Integrity. A vehicle fails if the system cannot maintain a system pressure above 8 inches of water for up to 2 minutes after being pressurized to 14 ± 0.5 inches of water. Additionally, vehicles fail the evaporative test if the canister is missing or damaged, if hoses or electrical connections are missing, mis-routed according to the vehicle emissions control information label, ~~or~~ disconnected, or if the gas cap is missing.
 - iii. ~~Purge System Flow Test. A vehicle with a total purge system flow measuring less than 1 liter, over the course of the transient test required in subsection (E)(2), fails the evaporative system purge test.~~
- c. Vehicles operating on compressed natural gas shall be in compliance if the HC emissions multiplied by 0.19 does not exceed the applicable standards in subsection (E)(5)(a) or (E)(5)(b).
- ~~d.e.~~ Motorcycles and constant 4-wheel drive vehicles which do not exceed the curb idle mode HC and CO emissions standards listed in Table 2 on either the 1st curb idle test or the 2nd curb idle test shall be in compliance with the minimum emissions standards in Table 2.
- ~~e.f.~~ Any vehicle exceeding the applicable emissions standards for the tests described in subsections (E)(1) and (E)(2)(a) fail the emissions test and shall have a low-emissions tune-up performed as described in R18-2-1010 before reinspection. Any vehicle that fails the test described in subsection ~~either subsections~~ (E)(2)(b) ~~or (E)(2)(c)~~ shall be repaired as required in R18-2-1010(D)(1) or (2), as applicable, before reinspection.
6. Each nondiesel vehicle required to take an annual emission test in area A shall, at the time of the test, undergo a tampering inspection based on the original configuration of the vehicle as manufactured. The applicable emission system requirements shall be verified by the "VEHICLE EMISSION CONTROL INFORMATION" label under the hood. Vehicles that fail any portion of the tampering inspection shall be repaired according to R18-2-1009 before reinspection or shall provide the written statement required in R18-2-1008(B). "Original configuration" for foreign manufactured vehicles means the design and construction of a vehicle produced by the manufacturer for original entry and sale in the United States. The inspection shall consist of the following:
- a. All nondiesel vehicles emission tested, except those with nonsealing gas caps, shall have a functional test of the gas cap to determine that cap leakage does not exceed ~~60~~ 200 cubic centimeters of air per minute at a pressure of 30 inches of water gauge. Nondiesel vehicles with nonpressurized, vented systems shall have a visual inspection to determine the presence of a properly fitting gas cap.
 - b. For 1975 and newer model year vehicles:
 - i. A visual inspection to determine the presence of properly installed catalytic converters;
 - ii. An examination to determine the presence of an operational air pump; and
 - iii. A visual inspection to determine the presence ~~or malfunction~~ of an operational ~~the~~ positive crankcase ventilation system and ~~the~~ evaporative control system.
- F. In area B, the inspection test procedures for all vehicles other than diesel-powered vehicles shall conform to the following:
1. Area B vehicles manufactured with a model year of 1967 through 1980 shall take and pass only a curb idle test. The curb idle test shall be performed with the vehicle in drive for vehicles with automatic transmissions or in neutral for vehicles with manual transmissions. Engine RPM shall be within ± 100 RPM of the manufacturer's specified idle RPM. HC and CO exhaust emissions shall be recorded after readings have stabilized, or at the end of 30 seconds, whichever occurs first. A CO₂ plus CO reading of 6% or greater shall be registered to establish test validity. A CO₂ plus CO reading less than 6% shall be proof of exhaust sample dilution and the vehicle shall be rejected from further emissions inspection. In the event the vehicle fails the curb idle test, and if requested by the vehicle operator, the vehicle shall be conditioned according to 1 of the following conditioning procedures:
 - a. For the fast-idle, the vehicle shall be conditioned by increasing engine speed to ~~2,500~~ 2500, ± 300 RPM, for up to 30 seconds with the transmission in neutral. HC and CO exhaust emissions concentrations shall be recorded after readings have stabilized, or at the end of 30 seconds, whichever occurs first. The conditioning mode standards in Table 2 shall be for diagnostic and advisory information only. After exhaust emissions have been recorded, the

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- engine speed shall be returned to curb idle for a 2nd idle test. The fast idle conditioning mode may be used on a vehicle at state stations in place of the loaded conditioning mode if any of the following occurs:
- i. The vehicle has a tire on a driving wheel with less than 2/32-inch tread, with metal protuberances, or with visibly low tire pressure, as determined by visual inspection, or any other condition that precludes loaded conditioning for reason of safety to personnel, equipment, or vehicle;
 - ii. The vehicle is driven by a person who, because of physical incapacity, is unable to yield the driver's seat to the vehicle ~~vehicular~~ emissions inspector;
 - iii. The driver refuses to yield the driver's seat to the vehicle ~~vehicular~~ emissions inspector; or
 - iv. The vehicle is unable to be tested according to Table 1 because of the vehicle's inability to attain the speeds specified.
- b. For the loaded condition, for all vehicles other than motorcycles and constant 4-wheel drive vehicles, the vehicle's drive wheels shall be placed on a dynamometer and the vehicle shall be operated according to Table 1, in drive for automatic transmission, or 2nd or higher gear for manual transmission. All front wheel drive vehicles shall be driven by the inspector. HC and CO exhaust emissions concentrations shall be recorded after readings have stabilized or at the end of 30 seconds, whichever occurs first. The conditioning mode standards in Table 2 shall be for diagnostic and advisory information only. After exhaust emissions have been recorded, engine speed shall be returned to curb idle for a 2nd idle test.
- c. Following ~~1 one~~ of the conditioning procedures in subsection (b), the vehicle shall be retested according to the curb idle test procedure in subsection (a).
2. Area B vehicles with a 1981 or newer model year, except motorcycles and constant 4-wheel drive vehicles, shall be required to take and pass both a loaded cruise test and curb idle test, described as follows:
- a. Loaded Cruise Test. The vehicle's drive wheels shall be placed on a dynamometer and the vehicle shall be operated according to Table 1, in drive for automatic transmission or 2nd or higher gear for manual transmission. Overdrive shall not be used. All front wheel drive vehicles shall be driven by the inspector. Exhaust emissions, HC and CO concentrations, shall be recorded after readings have stabilized or at the end of 90 seconds, whichever occurs first. After exhaust emissions have been recorded, engine speed shall be returned to idle for a curb idle test.
 - b. The Curb Idle Test. The test shall be performed with the vehicle in neutral. Engine RPM shall be within ± 100 RPM of the manufacturer's specified idle RPM. HC and CO exhaust emissions concentrations shall be recorded after readings have stabilized or at the end of 90 seconds, whichever occurs first. A CO₂ plus CO reading of 6% or greater shall be registered to establish test validity. A CO₂ plus CO reading less than 6% shall be proof of exhaust sample dilution and the vehicle shall be rejected from further emissions inspection.
3. All motorcycles and constant 4-wheel drive vehicles shall be required only to take and pass a curb idle test according to subsection (1). In the event the vehicle fails the curb idle test, and if requested by the vehicle operator, the vehicle shall be conditioned according to the fast idle conditioning procedure required in subsection (1)(b). Following conditioning, the engine speed shall be returned to idle for a 2nd curb idle test according to subsection (1)(a).
4. The emissions pass/fail determination shall be made as follows:
- a. Vehicles manufactured with a model year of 1967 through 1980, except motorcycles and constant 4-wheel drive vehicles, which do not exceed the curb idle mode HC and CO emissions standards in Table 2 on either the 1st curb idle test or the 2nd curb idle test, shall comply be in compliance with the minimum emission standards contained in Table 2.
 - b. Vehicles with a 1981 or newer model year, except motorcycles and constant 4-wheel drive vehicles, which do not exceed either the loaded cruise mode or curb idle mode HC and CO emissions standards listed in Table 2, shall comply be in compliance with minimum emissions standards in Table 2. The loaded cruise test standards specified in Table 2 shall apply to fleet vehicles tested with the 2,500 2500 RPM unloaded fast idle test.
 - c. Vehicles operating on compressed natural gas shall be in compliance if the HC emissions multiplied by 0.19 does not exceed the applicable standards in subsection (F)(4)(a) or (F)(4)(b).
 - ~~d.~~ Motorcycles and constant 4-wheel drive vehicles which do not exceed the curb idle mode HC and CO emissions standards in Table 2 on either the 1st curb idle test or the 2nd curb idle test shall comply be in compliance with the minimum emissions standards in Table 2.
 - ~~e.~~ Any vehicle exceeding the appropriate emissions standards fails the emissions test and shall have a low emissions tune-up as described in R18-2-1010 before reinspection.
5. An Each area B vehicle required to take an emission test under this Article, shall at the time of the test, undergo a tampering inspection based on the original configuration of the vehicle as manufactured, as follows:
- a. Vehicles that have pressure holding gas caps shall have a functional test of the gas cap to determine that cap leakage does not exceed 60 200 cubic centimeters of air per minute at a pressure of 30 inches of water gauge. Vehicles with nonsealing gas caps shall be checked for the presence of a properly fitting gas cap.
 - b. For 1975 and newer model year vehicles:

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- i. A visual inspection to determine the presence of properly installed catalytic converters; and
- ii. An examination to determine the presence of an operational air pump.

The above items shall be checked for conformance to the original configuration at time of manufacture. "Original configuration" for foreign manufactured vehicles means the design and construction of a vehicle produced by a manufacturer for original entry and sale in the United States. The applicable emission system requirements shall be verified by the "VEHICLE EMISSION CONTROL INFORMATION" label under the hood. Vehicles that fail any portion of the tampering inspection shall be repaired according to R18-2-1009 before reinspection or shall provide a written statement required by R18-2-1008(B).

6. Exhaust sampling in area B shall conform to the following:
 - a. All CO and HC emission analyzers shall have water traps incorporated in the sampling lines. Sampling probes shall be capable of taking undiluted exhaust samples from a vehicle exhaust system.
 - b. All vehicles, other than diesel-powered vehicles, shall be inspected with NDIR analyzers capable of determining concentrations of CO and HC within the ranges and tolerances specified in Table 5.
 - c. Vehicles with multiple exhaust pipes shall be inspected by collecting and averaging samples by 1 of the following methods:
 - i. Collect separate samples from each exhaust. The average concentration shall determine the test results;
 - ii. Use manifold exhaust probes to simultaneously sample approximately equal volumes from each pipe; or
 - iii. Use manifold exhaust pipe adapters to collect approximately equal volume samples from each pipe.

G. The following apply to all testing under subsections (E) or (F):

1. All rotary piston engines shall be treated in the same manner as 4-stroke engines with 4 cylinders or less;
2. All turbine engines shall be treated as 4-stroke engines having more than 4 cylinders; and
3. All vehicles in which a diesel engine has been replaced with a gas engine shall be inspected as gas-powered vehicles of the same vehicle model year. The vehicle shall not pass the test unless catalytic converters, air pumps, gas caps and other emissions control devices applicable to the vehicle model year and the same or more recent year engine configuration are properly installed and in operating condition.

H. In area A, the inspection test procedure for diesel-powered vehicles shall be as follows:

1. A diesel-powered vehicle with a GVWR greater than 8,500 pounds shall be tested with a procedure that conforms to Society of Automotive Engineers standard J1667, February 1996, incorporated by reference and on file with the Department and the Secretary of State. This incorporation by reference contains no future editions or amendments. A copy of this referenced material may be obtained at: Society of Automotive Engineers, 400 Commonwealth Dr., Warrendale, PA 15096-0001. The procedure shall utilize the corrections for ambient test conditions in Appendix B of J1667 for all tests. The test results shall be reported as the percentage of smoke opacity. Emissions pass/fail determinations are as follows:
 - a. Vehicles powered by a 1991 or later model year diesel engine shall fail if the J1667 final test result is greater than 40%, unless the engine family is exempted from the 40% standard under subsection (e);
 - b. Vehicles powered by a pre-1991 model year diesel engine shall fail if the J1667 final test result is greater than 55% unless the engine family is exempted from the 55% standard under subsection (e);
 - c. The engine model year is determined by the emission control label. If the emission control label is missing, illegible, or incorrect, the test standard shall be 40% unless a correct, legible emission control label replacement is attached to the vehicle within 30 days;
 - d. Any vehicle that exceeds the appropriate standard fails the emission test. Before reinspection, the vehicle shall have a low emissions tune-up as described in R18-2-1010(G);
 - e. The Director shall exempt any engine family from the standards in subsections (a) or (b) if the engine manufacturer demonstrates either of the following:
 - i. The engine family exhibits smoke opacity greater than the standard if in good operating condition and adjusted to the manufacturer's specifications. Instead the engine family shall comply with any technologically appropriate less stringent standard identified by the Director based on a review of data obtained from engines in good operating condition and adjusted to manufacturer's specifications; or
 - ii. The engine family is exempted from an equivalent standard based on J1667 by the executive officer of the California Air Resources Board (CARB). Instead the engine family shall comply with any technologically appropriate less stringent standard identified by the executive officer of CARB; and
 - f. A demonstration under subsection (e)(i) shall be based on data from at least 3 vehicles. Data from official inspections under subsection (H)(1) showing that vehicles in the engine family pass may be used to rebut the demonstration. The Director shall implement any new standard resulting from each exemption as soon as practicable for all subsequent tests and provide notice at all affected test stations and fleets.
2. A diesel-powered vehicle with a GVWR greater than ~~4,000~~ 4000 pounds and less than or equal to 8,500 pounds shall be tested by a loaded dynamometer test by applying a single load of 30 HP, \pm 2 HP, while operated at 50 MPH. A diesel-powered vehicle with a GVWR of ~~4,000~~ 4000 pounds or less shall be tested by a loaded dynamometer test by

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applying a single load of between 6.4 - 8.4 HP while operated at 30 MPH. For all diesel-powered vehicles with a GVWR less than or equal to 8,500 pounds:

- a. The emissions pass/fail determination shall be made as follows:
 - i. The opacity reading for a period of 10 consecutive seconds with the engine under applicable loading shall be compared to the opacity standard specified in R18-2-1030(B). Vehicles which do not exceed the opacity standards in R18-2-1030(B) shall be in compliance with the minimum emission standards.
 - ii. Any vehicle that exceeds the appropriate standard fails the emission test. Before reinspection, the vehicle shall have a low emissions tune-up as described in R18-2-1010.
- b. Exhaust sampling shall conform to the following:
 - i. Separate measurements shall be made on each exhaust pipe on diesel vehicles equipped with multiple pipes. For vehicles equipped with more than 1 exhaust pipe, the reading taken from the exhaust pipe which has the highest opacity reading shall be used for comparison with the appropriate emission standard.
 - ii. Vehicles shall be inspected with a full-flow, direct reading, continuous reading light extinction opacity meter using a collimated light source and photo-electric cell, accurate to a value within $\pm 5\%$ of filter value.

I. In area B, inspection test procedure for diesel-powered vehicles shall be as follows:

1. A diesel-powered vehicle with a GVWR greater than 26,000 pounds or having tandem axles shall be tested according to 1 of the following methods:
 - a. The vehicle shall be tested on a chassis dynamometer beginning with no power absorption by selecting a gear ratio which produces a maximum vehicle speed of 30-35 MPH at governed or maximum rated RPM. If the vehicle has a manual transmission or an automatic transmission with individual gear selection, the engine shall be operated at governed or maximum rated engine RPM, at normal operating temperature under a power absorption load applied to the dynamometer until such loading reduces the engine RPM to 80% of the governed speed at wide-open throttle position. If the vehicle has an automatic transmission and ~~with~~ automatic gear kickdown, the engine shall be loaded to a speed just above the kickdown speed or 80% of the governed speed, whichever is greater. If the chassis dynamometer does not have enough horsepower absorption capability to lug the engine down to these speeds, the vehicle's brakes may be used to assist the dynamometer.
 - b. If a chassis dynamometer is not available, the vehicle shall be tested by being lugged by its own brakes by selecting a gear ratio which produces a maximum speed of 10-15 MPH at governed engine RPM or maximum rated RPM and then loading the engine by applying the brakes until the engine RPM is lugged down to 80% of the governed or maximum rated RPM at wide-open throttle position. If the vehicle does not have a tachometer, the vehicle may be loaded to 80% of governed or maximum rated speed.
2. A diesel-powered vehicle without tandem axles and having a GVWR greater than 10,500 pounds and less than or equal to 26,000 pounds shall be tested according to 1 of the following methods:
 - a. The vehicle shall be tested on a chassis dynamometer beginning with no power absorption by selecting a gear ratio which produces a maximum vehicle speed of 30-35 MPH at governed or maximum rated RPM. If the vehicle has a manual transmission or an automatic transmission with individual gear selection, the engine shall be operated at governed or maximum rated engine RPM, at normal operating temperature under a power absorption load applied to the dynamometer until such loading reduces the engine RPM to 80% of the governed speed at wide-open throttle position. If the vehicle has an automatic transmission and ~~with~~ automatic gear kickdown, the engine shall be loaded to a speed just above the kickdown speed or 80% of governed speed, whichever is greater. If the chassis dynamometer does not have enough horsepower absorption capability to lug the engine down to these speeds, the vehicle's brakes may be used to assist the dynamometer;
 - b. The vehicle shall be tested by applying a single load of 30 HP, ± 2 HP, while operated at 50 MPH; or
 - c. The vehicle shall be tested by being lugged by its own brakes by selecting a gear ratio which produces a maximum speed of 10-15 MPH at governed engine RPM or maximum rated RPM and then loading the engine by applying the brakes until the engine RPM is lugged down to 80% of the governed or maximum rated RPM at wide-open throttle position. If the vehicle does not have a tachometer, the vehicle may be loaded to 80% of governed or maximum rated speed.
3. A diesel-powered vehicle with a GVWR of greater than ~~4,000~~ 4000 pounds and less than or equal to 10,500 pounds shall be tested by a loaded dynamometer test by applying a single load of 30 HP, ± 2 HP, while operated at 50 MPH.
4. A diesel-powered vehicle with a GVWR of ~~4,000~~ 4000 pounds or less shall be tested by a loaded dynamometer test by applying a single load of between 6.4 - 8.4 HP while operated at 30 MPH.
5. The emissions pass/fail determination shall be performed:
 - a. The opacity reading during a period of 10 consecutive seconds with the engine under applicable loading specified in subsection (1) through (4) shall be compared to the opacity reading standard specified in R18-2-1030(B). Vehicles which do not exceed the opacity standards in R18-2-1030(B) shall be in compliance with the minimum emission standards.
 - b. Any vehicle that exceeds the standard in R18-2-1030(B) shall fail the emission test. Before reinspection, the vehicle shall have a low emissions tune-up as described in R18-2-1010.

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6. Exhaust sampling shall conform to the following:
 - a. Separate measurements shall be made on each exhaust pipe on diesel vehicles equipped with multiple exhaust pipes. For vehicles equipped with more than 1 exhaust pipe, the reading taken from the exhaust pipe which has the highest opacity reading shall be used for comparison with the standard in R18-2-1030(B).
 - b. Vehicles shall be inspected with either a full-flow; or sampling-type opacity meter. The opacity meter shall be direct reading, continuous reading light extinction-type ~~opacity meter~~ using a collimated light source and photo-electric cell, accurate to a value within $\pm 5\%$ of filter value.

J. Area A ~~or area B~~ vehicles that are diesel-fueled and equipped with catalytic converters or PCV systems shall undergo a tampering inspection for those devices under subsections (E) or (F).

K. Area B vehicles that are diesel-fueled and equipped with catalytic converters shall undergo a tampering inspection for those devices under subsections (E) or (F).

R18-2-1007. Evidence of Meeting State Inspection Requirements

A. Vehicles required to be inspected under this Article shall pass inspection before registration by meeting the requirements of R18-2-1006, unless waived under R18-2-1008.

~~B.A.~~ The MVD motor vehicles emissions database, if available, may be used by the registering authority as evidence that a vehicle complies is in compliance with the requirements of this Article.

~~C.B.~~ If the MVD motor vehicles emissions database is not available, any of the following documents, when complete, unaltered and dated no more than 90 days ~~before prior to~~ registration expiration date, shall be accepted by the registering authority as evidence that a vehicle complies is in compliance with the requirements of this Article unless the registering authority has reason to believe it is a false document. Documents accompanying a late registration may be dated subsequent to the registration expiration date:

1. Certificate of compliance,
2. Certificate of waiver (except from auto dealers licensed to sell used motor vehicles under A.R.S. pursuant to Title 28),
3. Certificate of exemption, or
4. Director's certificate,
5. The upper section of the vehicle inspection report with "PASS" in the final results block.

~~D.C.~~ Complete and unaltered certificates of inspection dated within 12 months of registration for annually tested vehicles and 24 months for biennially tested vehicles shall be accepted by the registering authority as evidence that a vehicle is in compliance with the requirements of this Article unless the registering authority has reason to believe it is a false document.

~~E.D.~~ Documents from area B are not acceptable for meeting the inspection requirements in area A.

~~F.E.~~ Governmental vehicles for which only weight fees are paid shall be registered without evidence of inspection.

R18-2-1008. Procedure for Issuing Certificates of Waiver

A. Unless prohibited under subsections (C), (D) or (E), a A certificate of waiver shall be issued subsequent to reinspection by a state inspector at a state or Department station to a vehicle that failed the emissions inspection or the emissions and tampering inspections, when it is determined by repair receipts, emissions test results, evidence of repairs performed, under-hood verification, or other similar other evidence that the requirements of R18-2-1009 and R18-2-1010 have been met, or that with respect to emissions failures only, any further repairs within the repair cost limit would be ineffective. A waiver may be denied when a waiver request is based upon repair estimates and the state inspector demonstrates that a recognized repair facility can repair or improve the vehicle's test readings within the repair cost limit.

B. A certificate of waiver may be issued to a vehicle failing the tampering inspection if the owner of the vehicle provides to the Director a written statement from an automobile parts or repair business that an emission control device which is necessary to repair the tampering is not available and cannot be obtained from any usual source of supply ~~before the vehicle's current emission compliance expires~~ provided, if applicable, that all requirements of R18-2-1008(A) have been met. All written statements may be subject to verification for authenticity and accuracy by the Department. The Department may deny a certificate of waiver if the state inspector has any reason to believe the written statement is a false document or a usual source of supply does exist and the device which is necessary to repair the tampering is available ~~before the vehicle's current emission compliance expiration~~. Certificates of waiver for tampered vehicles may be issued conditionally for a specified period, not to exceed 90 days, which allows sufficient time for the procurement and installation of a proper emissions control device. Receipts or billing from a vehicle repair facility or automobile parts store shall be accepted as proof of purchase. Before or at the end of the specified time period the vehicle owner shall present to the Director proof of purchase and installation of the device to prevent cancellation of vehicle registration. The Department shall track all issued conditional certificates of waiver and if no proof of purchase and installation is received on or before the end of the specified time period, the Director shall forward to the Department of Motor Vehicles an order to cancel ~~the said~~ vehicle's registration.

C. ~~If the administrator of the United States environmental protection agency finds that area A has failed to demonstrate reasonable further progress or has failed to attain the national ambient air quality standards for ozone by the applicable attain-~~

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~~ment date, the~~ The Director shall not thereafter issue a waiver to a vehicle that has failed due to the catalytic converter system. A vehicle shall be deemed to have failed due to the catalytic converter system if the converter's oxidation efficiency, as measured by Catalyst Efficiency Test Procedure under R18-2-1031(A), is less than 75%, and there are no engine or fuel system malfunctions that would prevent the proper operation of the catalytic converter, if the vehicle is within 25% of all emissions standards and a properly performed comparison of exhaust gas before and after the converter demonstrates that the converter is performing at less than half the efficiency in Table 7 in R18-2-1031.

- D.** The Director shall not issue a waiver to a vehicle that fails the emission inspection test with HC, CO, NOx or opacity emission levels greater than 2 times the pass/fail standards in R18-2-1006 unless the vehicle is repaired to reduce emission levels below 2 times the pass/fail standards.
- E.** After January 1, 1997, the Director shall issue a certificate of waiver no more than 1 time to a vehicle.
- F.D.** The fee for a certificate of waiver shall be fixed by the Director according to A.R.S. § 49-543, and shall be based upon the Director's estimated costs to the state of administering and enforcing the provisions of this Article as they apply to issuance of certificates of waivers. Each fee shall be payable directly to the Department of Environmental Quality at the time the certificate of waiver is issued. The charge for certificates of waiver obtained from the Department is five dollars each.

R18-2-1009. Tampering Repair Requirements

- A.** Failure to pass a visual inspection for the presence or malfunction of the fuel filler neck inlet restrictor shall require replacement of the fuel filler neck inlet restrictor with a new OEM or new aftermarket fuel filler neck inlet restrictor. Names of approved aftermarket restrictors shall be available at time of inspection and listed on the repair requirement list.
- A.B.** Failure to pass a visual inspection to determine the presence of properly installed catalytic converters shall require replacement of the converters with new or reconditioned OEM converters or approved new aftermarket converters. Names of approved aftermarket converters shall be available at time of inspection and listed on the repair requirement list.
- B.C.** Failure to pass the functional gas cap pressure test described in R18-2-1006(E)(6)(a) or (F)(5)(a) shall require replacement with a gas cap that meets those specifications. Failure to pass a visual inspection for the presence of a gas cap on vehicles designed with vented systems shall require installation of a properly fitting gas cap.
- C.D.** Failure to pass a visual check to determine the presence of an operational air pump shall require replacement with a new, used, or reconditioned properly installed and operational air pump.
- D.E.** Failure to pass a visual inspection for the presence or malfunction of the positive crankcase ventilation system shall require the repair or replacement of the system or parts with OEM or equivalent parts thereof with new or reconditioned OEM parts or approved new aftermarket parts.
- E.F.** Failure to pass a visual inspection for the presence or malfunction of the evaporative control system shall require repair or replacement of the system or parts with OEM or equivalent parts thereof with new or reconditioned OEM parts or approved new aftermarket parts.
- G.** ~~Reconditioned emissions control devices shall be identified and installed with respect to application category. The application category means those vehicles for which the device was the original emissions control device.~~

R18-2-1010. Low Emissions Tune-up, Emissions and Evaporative System Repair

- A.** A low emissions tune-up on nondiesel-powered vehicles consists of a person performing the following procedures:
1. Emissions Failure Diagnosis. On computer-controlled vehicles, the on-board-diagnostics shall be accessed and any stored trouble codes recorded. The following instruments or equipment are required to complete a low emissions tune-up: tachometer, timing light, or an engine analyzer or oscilloscope, and where specified by the manufacturer, a HC/CO NDIR analyzer to make final A/F adjustments. Final adjustment shall be made on the vehicle engine only after the engine is at normal operating temperature. All adjustments shall be made according to the manufacturer's specifications and procedures.
 2. Inspection of Air Cleaner, Choke, and Air Intake System. The person shall replace or repair a dirty or plugged air cleaner, a stuck choke, or a restricted air intake system.
 3. Dwell and Basic Timing Check. Dwell and basic engine timing shall be checked and adjusted, if necessary, according to manufacturer's specifications.
 4. Inspection of PCV Valve. The PCV valve shall be checked to ensure that it is the type recommended by the manufacturer and that it is correctly operating. Free flow through the PCV system passages and hoses shall be verified. Repair and replace as required.
 5. Inspection of Vacuum Hoses. The vacuum hoses shall be inspected for leaks, obstruction, and proper routing and connection. Repair and replace as required.
 6. Perform a visual inspection for leaking fuel lines or system components. Repair and replace as required.
 - 7.6. Idle Speed and A/F Mixture Check. The idle speed and A/F mixture shall be checked and adjusted according to manufacturer's specifications and procedures. If vehicle is equipped with fuel injection system or an alternate fuel (LPG or LNG) the manufacturer's recommended adjustment procedure shall be followed.

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- B.** A low emissions tune-up and diagnosis must be performed on each ~~at~~ a vehicle in order to qualify for a waiver if the vehicle fails reinspection.
- C.** If the maximum required repair cost in subsections (E) and (F), or the vehicle owner share of repair costs in R18-2-1014 ~~(E)(D)~~, if applicable, whichever is less, is not exceeded after a low emissions tune-up described in subsection (A), then a person shall perform the following and repair or replace as required:
1. If a vehicle fails the CO only, the vehicle shall be checked for proper canister purge system operation, high float setting, leaky power valve, faulty or worn needles, seats, jets or improper jet size. If applicable, the person shall check the computer, engine and computer sensors, engine solenoids, engine thermostats, engine switches, coolant switches, throttle body or port fuel injection system, fuel injectors, fuel lines, (routing and integrity), air in fuel system (for example, line, pump), fuel return system, injection pump, fuel injection timing, routing of vacuum hoses and ~~or~~ electrical connections.
 2. If a vehicle fails HC or HC and CO, the vehicle shall be checked for faulty spark plugs and faulty, open, crossed, or disconnected plug wires, distributor module, vacuum hose routing and electrical connections; and for distributor component malfunctions including vacuum advance, faulty points or condenser, and distributor cap crossfire, catalytic converter efficiency, and catalytic converter air supply; and for vacuum leaks at intake manifold, carburetor base gasket, EGR, and vacuum-operated components.
 3. If a vehicle fails NO_x, the vehicle shall be checked for removed, plugged, or malfunctioning EGR valve; exhaust gas ports, lines, and passages; EGR valve electrical and vacuum control circuitry, components, and computer control, as applicable; and for above normal engine operating temperature, proper air management, lean A/F mixture, catalytic converter efficiency and over advanced off-idle timing.
- D.** Evaporative System Failures:
1. If a vehicle fails an evaporative system integrity (pressure) test, the vehicle shall be checked for leaking or disconnected vapor hoses, line, gas cap, and fuel tank.
 2. If a vehicle fails a visual inspection of the evaporative system, check for a missing or damaged canister, canister electrical and vacuum control circuits and components, disconnected, damaged, mis-routed or plugged hoses, and damaged or missing purge valves. Repair and replace as necessary. ~~If a vehicle fails an evaporative system purge test, the vehicle shall be checked for missing or malfunctioning canister, canister electrical and vacuum control circuits and components.~~
- E.** The maximum required repair cost for vehicles in area A, not including costs to repair vehicles which fail an evaporative system ~~purge or~~ integrity test due to tampering, or other tampering repair costs, is:
1. Five hundred dollars for a diesel-powered vehicle with a GVWR greater than 26,000 pounds or a diesel-powered vehicle with tandem axles; or
 2. For a vehicle other than a diesel-powered vehicle with a GVWR greater than 26,000 pounds or a diesel-powered vehicle with tandem axles:
 - a. Two hundred dollars for a vehicle manufactured in or before the 1974 model year;
 - b. Three hundred dollars for a vehicle manufactured in the 1975 through 1979 model years; and
 - c. Four hundred and fifty dollars for a vehicle manufactured in or after the 1980 model year.
- Subsection (E) does not prevent a vehicle owner from authorizing or performing more than the required repairs. A vehicle operator who has a vehicle reinspected shall have repair receipts available when requesting a certificate of waiver.
- F.** The maximum required repair cost for vehicles in area B, not including tampering repair costs, is:
1. Three hundred dollars for a diesel-powered vehicle with a GVWR greater than 26,000 pounds or a diesel-powered vehicle with tandem axles; or
 2. For a vehicle other than a diesel-powered vehicle with a GVWR greater than 26,000 pounds or a diesel-powered vehicle with tandem axles:
 - a. Fifty dollars for a vehicle manufactured in or before the 1974 model year;
 - b. Two hundred dollars for a vehicle manufactured in the 1975 through 1979 model years; and
 - c. Three hundred dollars for a vehicle manufactured in or after the 1980 model year.
- Subsection (F) does not prevent a vehicle owner from authorizing or performing more than the required repairs. A vehicle operator who has a vehicle reinspected shall have repair receipts available when requesting a certificate of waiver.
- G.** A low emissions tune-up on diesel-powered vehicles consists of a person performing the following procedures:
1. Inspection for dirty or plugged air cleaner, restricted air intake system; repair and replace as required.
 2. Checking fuel injection system timing according to manufacturer's specifications; adjust as required.
 3. Checking for fuel injector fouling, leaking or mismatch; repair and replace as required.
 4. Checking fuel pump and air-fuel ratio control according to manufacturer's specifications; adjust as required.
 5. If the vehicle fails the J1667 procedure, checking smoke-limiting devices, if any, such as the aneroid valve and puff limiter. Repair and replace as required.
- H.** Any available warranty coverage shall be used to obtain needed repairs before expenditures can be counted towards the cost limits in subsections (E) and (F). The operator of a vehicle within the ~~statutory~~ age and mileage coverage of ~~under~~

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section 207(b) of the Clean Air Act shall present a written denial of warranty coverage from the manufacturer or authorized dealer for this provision to be waived.

R18-2-1011. Vehicle Inspection Report

- A.** Each vehicle inspected at a state station shall be provided a serially numbered vehicle inspection report of a design approved by the Director and shall provide for the following information as a minimum:
1. License plate number;
 2. Vehicle identification number;
 3. Model year of vehicle;
 4. Make of vehicle;
 5. Style of vehicle;
 6. Type of fuel;
 7. Odometer reading to the nearest 1000 miles, truncated;
 8. Emissions standards for idle and loaded cruise modes, if applicable;
 9. Emissions measurements during idle and loaded cruise modes, if applicable;
 10. Opacity measurements and standards, if applicable;
 11. Emission standards and measurements for the transient loaded test, and the evaporative system integrity test and purge tests, if applicable;
 12. Tampering inspection results;
 13. Repair requirements;
 14. Final test results;
 15. Repairs performed;
 16. Cost of emissions related repairs;
 17. Cost of tampering related repairs;
 18. Name, address and telephone number of the business firm or person making repairs;
 19. Signature and license or certification number of person certifying repairs;
 20. Date of inspection;
 21. Test results of the previous inspection if the inspection is a reinspection;
 22. Type of business making repairs;
 23. State certification number of technician making repairs, if applicable;
 24. Inspection station, lane locators; and
 25. Test number and time of test; .
- B.** Each vehicle failing the initial inspection shall receive an inspection report supplement approved by the Department containing, at a minimum, both of the following:
1. Diagnostic and tampering information including acceptable replacement units, and
 2. Applicable maximum repair costs.
- C.** The inspection report shall provide a ~~3-inch three-inch~~ by ~~5-inch five-inch~~ tear-out section that may be used as a certificate of compliance for vehicles that pass the inspection or as a certificate of waiver when applicable.
1. The tear-out section shall be a certificate of compliance when the word “compliance” appears in the appropriate location on the printout.
 2. The tear-out section shall be a certificate of waiver when the word “waiver” appears in the appropriate location on the printout.
 3. The tear-out section shall contain all of the following information:
 - a. License plate number.
 - b. Vehicle identification number.
 - c. Final results.
 - d. Serial number of the inspection report.
 - e. Date of inspection.
 - f. Model year.
 - g. Make.
 - h. Date of initial inspection.
 - i. Inspection fee.
- D.** At the time of registration or reregistration, the certificate of compliance or certificate of waiver may be submitted to the Arizona Department of Transportation Motor Vehicle Division ~~in Pima County or the Maricopa County Assessor in Maricopa County with the application for Arizona certificate of title and registration (DOT 48-0510) or an Arizona Registration Card (DOT 48-5113)~~ as evidence of meeting the requirements of this Article.

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R18-2-1012. Inspection Procedures and Fee

- A. Each vehicle that is inspected by a state station must be accompanied by a document such as registration renewal notice, registration, certificate of title, or bill of sale which identifies the vehicle by make, model year, identification number and license plate if applicable.
- B. If the registration renewal notice is used as an entrance document, it shall be stamped by the test lane inspector. If the vehicle inspection report from the previous test is used, it shall be retained by the test lane inspector.
- C. The fees for emissions inspections at a state station shall be specified in the contract between the contractor and the state of Arizona according to A.R.S. § 49-543, and shall include the full costs of the vehicle emissions inspection program including administration, implementation and enforcement. Each fee is payable directly to the contractor at the time and place of inspection in cash or by check approved by the contractor. ~~Money~~ ~~Monies~~ collected by the contractor to defray the costs of the inspection shall be retained by the contractor. ~~The amounts collected to defray the costs of the administration, implementation and enforcement of the program shall be remitted to the Department.~~ Amounts collected shall be recorded and reported to the Department monthly. The contractor shall submit to the state of Arizona on a monthly basis, by the 10th ~~teenth~~ day of each month a report setting forth the number of inspections performed and the amount of fees collected.
- D. Subsequent inspections, if needed, shall be treated by the state and the contractor in the same manner as an initial inspection and reinspection, providing for ~~1 one~~ free reinspection according to ~~in accordance with~~ R18-2-1013, if needed, following each paid inspection. The fee for each subsequent inspection shall be the full fee as provided for in the contract with the independent contractor.
- E. ~~All inspection fees collected by the county assessor pursuant to A.R.S. § 49-543(C) shall be transferred to the state treasurer for deposit in the emissions inspection fund upon completion of each daily closing except when daily inspection fee collections are less than \$2500. When daily inspection fee collections are less than \$2500 they shall be transferred to the state treasurer for deposit in the emissions inspection fund at such time as they are cumulatively \$2500 or more. In the event cumulative inspection fee collections are less than \$2500 for any month they shall be transferred to the state treasurer for deposit in the emissions inspection fund by the fifth working day of the following month. An accounting of all monies shall be made at the time of transfer. The accounting of monies transferred to the treasurer shall contain the number of single fees and the number of multiple fees collected and the amount forwarded. Documents such as certificates of compliance and certificates of waiver, which indicate the number of inspection fees to be collected with the registration, shall be filed in a manner that provides traceability to the associated registration document.~~
- ~~E.F.~~ State station emissions inspectors shall not recommend repairs or repair facilities.

R18-2-1013. Reinspections

- A. Each vehicle which fails its initial inspection or any subsequent paid inspection is entitled to ~~1 one~~ reinspection at no additional charge under the following conditions:
 - 1. The vehicle is presented for inspection within 60 consecutive calendar days of the initial or any subsequent paid inspection, provided that the vehicle operator presents the vehicle inspection report for the previous inspection, indicating the itemization of the repairs performed.
 - 2. Emission related repairs or adjustments and any tampering repairs have been made.
 - 3. The vehicle is accompanied by the entire vehicle inspection report from the initial or subsequent inspections with the following information filled in on the reverse side:
 - a. Emissions related and tampering related repairs that have been made;
 - b. Cost of emissions related and tampering related repairs as reflected by receipts of purchase;
 - c. Name, address, phone number and type of facility making repairs;
 - d. Signature of person certifying repairs were made;
 - e. Date of repairs; and
 - f. The state certification number of the technician making repairs if so certified.
- B. Vehicles shall be retested after repair for any portion of the inspection that is failed on the previous test to determine if repairs were effective. To the extent that repair to correct a previous failure could lead to failure of another portion of the test, that portion shall also be retested. Evaporative system repairs shall trigger an exhaust emissions retest.
- C. A vehicle that fails a reinspection shall be provided a vehicle inspection report and a vehicle inspection report supplement.

R18-2-1014. Vehicle Repair Grants

- A. The Department shall pay for a portion of emission related repairs on a vehicle in an amount not to exceed the maximum amount in subsection (D) if all of the following are true:
 - 1. The vehicle is an area A vehicle and fails an annual, biennial, or remote sensing triggered emission test.
 - 2. The owner of the vehicle is determined to be an assistance recipient of the food stamp program according to subsection (B).
 - 3. ~~For model year 1975 and newer vehicles, a low emissions tune-up pursuant to R18-2-1010(A) has been performed, and a diagnosis and estimate of further repairs needed, if any, to bring the vehicle into compliance is done on the vehi-~~

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ele by a recognized automotive repair facility before prior to the repair or repairs to be paid for by the Department, according to subsection (C). For model year 1974 and older vehicles, the same requirement applies except that a portion of the low emissions tune-up and diagnosis may be included in the repairs to be paid for by the Department, if it is performed subsequent to the initial failure.

4. The needed repair or repairs in excess of the vehicle owner's share are confirmed and authorized at the indicated amount by a Department waiver facility pursuant to the diagnosis and estimate and any state inspection. No amount shall be authorized for correcting equipment that has been recorded as failing the tampering inspection, except that if the Administrator makes the finding described in R18-2-1008(C), a n amount may be authorized for the repair or replacement of a catalytic converter system that causes the vehicle to fail as described in R18-2-1008(C) that subsection.
5. The repair facility confirms that the vehicle owner has paid, or agreed to pay on terms acceptable to the facility, for repairs incurred subsequent to the initial failure and necessary for the correction of the emission failure., in an amount equal to one half of the waiver limit for the vehicle. Monies paid for the low emissions tune-up and diagnosis pursuant to R18-2-1010(A) shall be considered for this determination. Monies paid for correcting equipment that has been recorded as failing the tampering inspection shall not be considered for this determination.
6. The authorized repairs are performed by a recognized repair facility and confirmed on the vehicle at a Department waiver facility during reinspection within 7 days of repair. If the repair facility does not receive payment within 30 days of repair, the repairs may be confirmed by the repair facility sending the Department a copy of the completed repair voucher provided by the Department, signed by the vehicle owner and repair facility technician performing the repairs.

B. Eligibility determination. The determination of eligibility pursuant to (A)(2) shall be made by the Department or its authorized representative. The determination may be made by directly accessing information in the department of economic security (DES) food stamp assistance database on a date after the owner's vehicle has failed, or based on documentation originating from DES and identifying the vehicle owner as a recipient. Ownership of the vehicle may be determined by a recent MVD document such as a title or by accessing information in the MVD database. Identification of the vehicle owner for food stamp recipient status shall be confirmed with the date of birth or other information on the owner's driver license. An owner who has been determined eligible under subsections (A)(1) and (2) shall be provided with evidence of that determination and the documentation necessary to obtain a repair grant at the state test station. A determination of eligibility under this subsection shall be valid for 60 days.

C. Low emissions tune up, diagnosis and estimate. Authorizations of repairs shall not be made unless a low emissions tune up, and a diagnosis and estimate have been made as follows:

1. The low emissions tune-up shall be performed by a recognized repair facility of the owner's choice based on the class of vehicle as provided in R18-2-1010(A).
2. If the repair facility believes after the low emission tune-up that the vehicle will still fail, a diagnosis and cost estimate shall be provided on a repair invoice which describes the facility by name, address and telephone number.

D. Repair categories, maximum grant amounts and vehicle owner responsibility are as outlined in the table below:

Repair Category	Maximum Grant Amounts		
	1967-74	1975-79	1980 & newer
Low emissions tune-up (R18-2-1010(A))	50	0	0
Repair of tampered items	0	0	0
Any other approved emission-related repairs	\$50	\$150	\$225

(Vehicle owner share to qualify for grant) \$50 \$150 \$225

A. The Department shall pay for a portion of approved emission related repairs in an amount not to exceed the maximum amount in subsection (F). Eligibility requirements for food stamp recipients is outlined in subsection (B) and eligibility requirements for vehicles that have received a 1-time only waiver is outlined on subsection (C).

B. Repair grant assistance eligibility for a current food stamp recipient shall be determined by the following:

1. The vehicle is an area A vehicle and fails the annual, biennial, or remote sensing triggered emission test.
2. The owner of the vehicle is a current food stamp recipient.
 - a. The determination of food stamp eligibility shall be made by the Department or its authorized representative based on documentation provided by the Department of Economic Security (DES) which identifies the vehicle owner as a current food stamp recipient.
 - b. The determination of vehicle ownership shall be based on current title or registration information.

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- C.** Repair grant assistance eligibility for a vehicle that has received a 1-time only waiver on or after January 1, 1997 shall be determined by the following:
1. The vehicle is an area A vehicle that fails the annual, biennial, or remote sensing triggered emission test.
 2. The vehicle has already received a 1-time only waiver as determined by accessing the vehicle inspection database maintained by the testing contractor.
 3. The vehicle has not previously been repaired under the waiver grant assistance program.
 4. Application for assistance is made by the vehicle owner, based on current title or registration information.
- D.** Each owner of a vehicle eligible for repair assistance shall have:
1. A recognized repair facility perform a low emissions tune up and diagnosis according to R18-2-1010(A), and provide an estimate of additional repairs needed, if any, to bring the vehicle into compliance, provided by a recognized repair facility. The diagnosis and cost estimate shall be on a repair invoice which describes the facility by name, address, and phone number.
 2. All needed repair in excess of the low emission tune-up and diagnosis performed after they are confirmed and authorized by a Department waiver facility.
 3. The recognized repair facility certify that the vehicle owner has paid, or agreed to pay on terms acceptable to the facility, one-half of the approved repairs incurred after the initial failure and necessary for the correction of the emission failure. Money paid for the low emission tune-up and diagnosis under R18-2-1010(A) shall be included toward the vehicle owners portion. Money paid for correcting equipment tampering shall not be considered for this determination.
 4. The authorized repairs performed by the same recognized repair facility which performed the low emission tune-up and diagnosis.
 5. Repairs verified at a Department waiver facility during reinspection within 7 days of completion of the repair.
- E.** The maximum grant amounts are:
1. One hundred dollars for a 1967 through 1974 model year vehicle.
 2. One hundred fifty dollars for a 1975 through 1979 model year vehicle.
 3. Two hundred twenty five dollars for a 1980 and newer model year vehicle.

R18-2-1015. On-road Testing; High Emissions Identifications

- A.** The Director shall operate an on-road testing program in area A as a supplement to annual, biennial and motor vehicle dealer emissions testing. The program shall consist of mobile remote sensing units to identify high emitting vehicles under pursuant to A.R.S. § 49-542.01. The Director may operate the program through 1 one or more contractors.
- B.** An identification of a vehicle as exceeding emission standards shall consist of all of the following:
1. The vehicle shall be registered in area A on the date of the identification as shown in the MVD database by the permanent address of the owner.
 2. The vehicle shall not have a waiver on record that allows the vehicle to exceed an emission standard for any of the pollutants identified as being exceeded.
 3. The vehicle is identified as having exceeded an HC or CO emission standard in Table 6. Each exceedance shall be linked photographically to a license plate and shall be linked to a particular vehicle by the VIN of the vehicle registered with the license plate as shown in the MVD database on the date of the identification.
 4. No conditions existed during the identification which, in the opinion of the inspector making the remote measurement, would lead to an invalid reading for the vehicle.
- ~~**C.** An identification of a vehicle as having exceeded an emissions standard shall be counted as a second identification if the same vehicle exceeded the same standard in a previous identification, and a time period has elapsed between the two identifications which is greater than 30 days and less than 12 months and during which there is no record of a passed emission test for the vehicle.~~
- ~~**C.D.** Any letter sent by the Department requiring an emissions test following pursuant to a remote sensing identification shall indicate whether or not the required test may also be used for the purpose of complying with registration or reregistration requirements for that vehicle under pursuant to A.R.S. § 49-542(C), and if so, shall indicate the time period within which the test must take place for it to be used to also comply with the registration requirements.~~
- ~~**D.E.** An emission test that is required following pursuant to a remote sensing identification shall be performed at a state station or waiver station under pursuant to R18-2-1006 and shall not require payment of the applicable any test fee, unless the test can be used for the purpose of complying with registration or reregistration requirements pursuant to A.R.S. § 49-542(C). To be tested without a fee pursuant to this Section, the vehicle shall be presented for testing with the letter from the Department requiring the vehicle to be tested and with evidence of any repairs or adjustments that have taken place subsequent to the last identification. Failure of an emission test that is required following pursuant to a remote sensing identification shall require the vehicle to be repaired and pass reinspection or to receive a waiver from any emission standards not complied with within 30 days of the initial test to avoid suspension of registration. One reinspection shall ~~also~~ be free as provided in R18-2-1012(D).~~

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- F.** For 24 months after the effective date of this Section, the emission standards for each vehicle type in Table 6 may be adjusted according to the following procedures:
1. A standard shall be raised by 10% relative if there have been 50 or more vehicles in the vehicle type that have taken an initial emission test pursuant to a remote sensing identification using that emission standard and for which the Director has determined that no repair or adjustment has taken place since the last identification, and five percent or more of the sample passed the test.
 2. A standard shall be lowered by 10% relative if both subparagraphs (a) and (b) are satisfied:
 - a. The Director determines that the rate of vehicles in any vehicle type being identified as high emitters for the standard is less than half the failure rate for the pollutant in the last complete calendar month for the official I/M emissions test, and
 - b. There have been 50 or more vehicles in the vehicle type that have taken an initial emission test pursuant to a remote sensing identification using that emission standard and for which the Director has determined that no repair or adjustment has taken place since the last identification and less than one percent of the sample passed the test.

R18-2-1016. Licensing of Inspectors

- A.** No person shall be licensed or have a license renewed as a ~~vehicle~~ ~~vehicular~~ emissions inspector unless the person has demonstrated proficiency to the Department by passing a written examination with a score equal to or greater than 80% in the following areas:
1. With respect to persons being licensed as nondiesel-powered fleet vehicle emissions inspectors:
 - a. Equipment used in the inspection and the control of emissions.
 - b. Types of emission inspection failures.
 - c. Corrective procedures for excessive HC emissions.
 - d. Corrective procedures for excessive CO emissions.
 - e. Corrective procedures for excessive NO(x) emissions, for inspectors in area A.
 - f. Proper carburetor adjustment procedures.
 - g. Computerized engine control systems.
 - h. Regulations governing fleet stations, ~~if applicable~~.
 2. With respect to persons being licensed as diesel-powered fleet vehicle emissions inspectors:
 - a. Equipment used in the inspection and the control of opacity and emissions.
 - b. Corrective procedures for excessive opacity.
 - c. Proper fuel injection system adjustment procedures.
 - d. Proper use of tools required by the vehicle manufacturer for field setting of fuel injectors, inlet and exhaust valve clearance, governors, and throttle controls.
 - e. Computerized engine control systems.
 - f. Regulations governing fleet stations, ~~if applicable~~.
 3. With respect to persons being licensed as state station vehicle emission inspectors:
 - a. Air pollution causes and effects.
 - b. Purpose, function and goals of the inspection program.
 - c. State inspection regulations.
 - d. Test procedures and rationale for their design.
 - e. Emission control devices, configuration and inspection.
 - f. Test equipment operation, calibration and maintenance.
 - g. Proficiency in driving the transient test cycle in Table 4.
 - ~~h. Quality control procedures.~~
 - ~~i. Public relations.~~
 - ~~j. Safety and health issues related to the inspection process.~~
 4. Licensees shall demonstrate the ability, without the assistance of another person, to conduct a proper inspection, including proper use of equipment and procedures, as a condition of passing the licensing examination. If an inspector fails to demonstrate such ability in an audit, either covert or overt, the inspector's license shall be suspended. The suspended licensee shall demonstrate to the Department the skills required by this paragraph within 30 days of suspension or such license shall be revoked.
- B.** A vehicle emissions inspector applicant for licensure as a nondiesel-powered ~~or diesel-powered~~ vehicle emissions inspector who fails an examination for vehicle emissions inspector shall successfully complete the applicable vehicle emissions inspector state training program before ~~prior to~~ reexamination for licensure.
- C.** Applications shall be obtained from, and approved by, the Department.
- D.** All completed applications shall be returned to the Department.
- E.** Licenses issued to ~~vehicle~~ ~~vehicular~~ emissions inspectors shall be renewed annually on or before the expiration date. An inspector whose license has expired shall cease inspecting vehicles.

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- F. Applications for renewal of ~~vehicle~~ ~~vehicular~~ emissions fleet inspector's licenses shall be submitted within 30 days before ~~prior to~~ the current license expiration date.
- G. The Department may suspend, revoke, or refuse to renew a license if the licensee has violated any provision of Title 49, Chapter 3, Article 5 of the Arizona Revised Statutes or any provision of this Article or fails to continue to demonstrate proficiency to the Department as required in subsection (A).
- H. A ~~vehicle~~ ~~vehicular~~ emissions inspector shall inform the Department of any change in employment status within 7 ~~seven~~ days of such change.
- I. Each ~~vehicle~~ ~~vehicular~~ emissions inspector shall be assigned a single, unique, nontransferable inspector's number.

R18-2-1017. Inspection of Governmental Vehicles

- A. Inspection of governmental vehicles operated in areas A and B shall be conducted in any of the following manners:
 - 1. At a licensed fleet station operated by the governmental entity.
 - 2. At a state station upon payment of the fee.
 - 3. At a state station upon payment pursuant to a contract with the state emissions contractor, either singly or in combination with other fleet operators.
- B. All governmental vehicles except federally owned vehicles which are excluded from the definition of motor vehicles pursuant to 40 CFR 85.1703, shall be inspected according to in accordance with this Article and shall have Government Vehicle Certificate of Inspection ~~an inspection sticker~~ affixed to the vehicle when found to be in conformance with state inspection requirements.
 - 1. ~~The emissions expiration inspection sticker, shall designate the year in which the vehicle is due for its next annual or biennial inspection. The second part, or month sticker, shall designate the month of inspection. The year sticker shall bear the last two characters of the year, and shall have a single unique serial number. The month sticker shall bear the three letter abbreviation for the month of inspection. The vehicle emissions inspector performing the inspection shall punch out select the appropriate year and month on the Government Vehicle Certificate of Inspection stickers to designate when the vehicle is due for its next annual or biennial inspection. The Government Vehicle Certificate of Inspection selected stickers shall be affixed to the vehicle when found to be in compliance with state inspection requirements. The vehicle emission inspector, at the time of inspection, shall record the serial number of the Government Vehicle Certificate of Inspection year sticker on the vehicle inspection report. If the vehicle emission inspection was performed by a fleet station, the emission inspector, at the time of inspection, shall record the serial number in the block labeled "Certificate of Inspection No." on the fleet vehicle inspection report/monthly summary (Form IPS 4008). Presence of a current Government Vehicle Certificate of Inspection expiration inspection stickers indicates a governmental vehicle has met the state of Arizona emission inspection requirements.~~
 - 2. All vehicles, with the exception of motorcycles and undercover law enforcement vehicles shall have the Government Vehicle Certificate of Inspection ~~emission expiration stickers~~ affixed to the lower left side of the rear window as determined from a position facing the window, from outside the vehicle. On vehicles that do not have a rear window, the Government Vehicle Certificate of Inspection ~~stickers~~ shall be affixed to the lower left corner of the windshield as determined from the driver's position. ~~The month expiration sticker shall be the 1st first sticker affixed adjacent to the left corner, and the year expiration sticker shall be affixed immediately to the right of the month expiration sticker.~~
 - 3. All motorcycles shall have the Government Vehicle Certificate of Inspection ~~the year and month expiration inspection stickers~~ affixed to the lower left-hand corner of the windscreen. If it is impractical to affix the Government Vehicle Certificate of Inspection ~~stickers~~ in the lower left-hand corner of the windscreen, the Government Vehicle Certificate of Inspection ~~stickers~~ may be affixed to a visible position on the front or left side of the left front fork. The left-hand corner of the windscreen or fork shall be determined from the driver's position.
 - 4. Undercover law enforcement vehicles, as evidenced by private vehicle license plates and lack of law enforcement markings or identification, shall have the Government Vehicle Certificate of Inspection ~~year and month inspection stickers~~ affixed to the vehicle's log book.
 - C. The Government Vehicle Certificate of Inspection ~~inspection stickers~~ shall be purchased from ~~supplied by~~ the Department ~~at no charge to the governmental entity.~~ in lots of 25.
 - 1. The fee for a certificate of inspection shall be fixed by the Director according to A.R.S. § 49-543, and shall be based upon the director's estimated costs to the state of administering and enforcing the provisions of this Article as they apply to issuance of certificates of inspections. Payment for certificates shall be included with an application for certificates. Checks shall be made payable to the Department of Environmental Quality.
 - 2. Only the Department shall sell or otherwise transfer certificates of inspection.
 - D. All Government Vehicle Certificates of Inspection ~~inspection stickers~~ shall be designed, issued, and administered, subject to conditions as the Director deems necessary to ensure compliance with this Article. The Department shall be the only source of supply for Government Vehicle Certificates of Inspection ~~inspection stickers~~.
 - E. Governmental entity fleet stations shall inspect all their fleet vehicles according to in accordance with R18-2-1019 except that ~~no~~ government vehicle certificate of inspection shall be used for governmental vehicles.

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- F. A quarterly statement identifying vehicles and test results shall be mailed by the governmental entity to the Department within 10 ~~ten~~ working days following the end of the quarter.

R18-2-1018. Certificate of Inspection

- A. Certificates of inspection shall be used by a fleet station other than a governmental entity fleet station as evidence that its vehicles have met requirements of this Article unless inspection data is electronically transmitted under ~~pursuant to~~ A.R.S. § 49-542(Q). If the vehicle is inspected at a state inspection station, the vehicle inspection report provided under ~~pursuant to~~ R18-2-1011 shall be used.
- B. A certificate of inspection shall provide the following information:
1. VIN,
 2. Model year,
 3. License number,
 4. ~~If applicable, that the inspection meets area A inspection requirements~~ Purpose of inspection,
 5. Owner of vehicle,
 6. Date of expiration,
 7. Fleet station permit number, and
 8. Inspector's signature and number.
- C. A certificate of inspection issued to a fleet vehicle is transferable to an auctioneer who intends to sell the vehicle and who is licensed as a used motor vehicle dealer. The certificate of inspection is valid for a period not to exceed 180 days after the transfer unless the vehicle is reregistered with a new owner, in which case the vehicle shall be inspected according to ~~in accordance with~~ this Article before the reregistration.
- D. Certificates of inspection, either complete or incomplete, are not transferable except as indicated in subsection (C).
- E. Only the person who has met the requirements of R18-2-1019(D)(1) shall be authorized to purchase certificates of inspection or waiver and requisition government entity stickers.

R18-2-1019. Fleet Station Procedures and Permits

- ~~A. Vehicles owned by or leased to a holder of a fleet emissions inspection station permit shall be inspected according to R18-2-1006(E) through (I), except as follows:~~
- ~~1. Dealer fleet vehicles in area A held for resale and all area B fleet vehicles, if manufactured in or after the 1981 model year, other than diesel-powered, shall be required to take and pass both the curb idle test specified in R18-2-1006(F)(1) and a 2,500 RPM unloaded fast idle test as follows:
 - a. The vehicle's engine shall be operated at 2500, ± 300 RPM, for up to 30 seconds with the transmission in neutral; and
 - b. HC and CO exhaust emissions concentrations shall be recorded after readings have stabilized or at the end of 30 seconds, whichever occurs first, and compared to the loaded cruise standards in Table 2.~~
 - ~~2. Dealer fleet vehicles in area A held for resale, if manufactured in or before the 1980 model year other than diesel-powered, shall be required to take and pass a curb idle test according to R18-2-1006(F)(1). The loaded cruise test standards specified in Table 2 of this Article are applicable to fleet vehicles tested with the 2,500 RPM unloaded fast idle test. A fleet emissions inspection station that is unable to test at least 25 vehicles according to R18-2-1006 and this Section shall surrender its license.~~
- B. The following equipment requirements shall apply to permits for all fleet stations:**
- ~~1. If the permit is for the inspection of nondiesel-powered vehicles, all of the following equipment shall be owned or leased by the permit applicant or permit holder, or its employees, and shall be in good working condition:
 - a. Ignition timing light with timing advance tester;
 - b. Ignition operated tachometer;
 - c. Dwell meter;
 - d. Socket tool for replacing spark plugs;
 - e. Spark plug gap setting tool;
 - f. Tools for replacing or adjusting carburetors or fuel injection systems, distributors, fuel pumps, and ignition coils; and
 - g. NDIR analyzer.~~
 - ~~2. If the permit is for the inspection of diesel-powered vehicles, all of the following equipment shall be owned or leased by the permit applicant or permit holder, or its employees, and shall be in good working condition:
 - a. Tools for removing fuel pumps and injectors;
 - b. Fuel pressure gauge;
 - c. Opacity meter. The meter shall meet J1667 specifications for vehicles with a GVWR greater than 8500 lbs. in area A;
 - d. Tools required by the vehicle manufacturer for field setting of fuel injectors, inlet and exhaust valve clearance, governors, and throttle controls; and~~

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- e. A dynamometer for testing light duty diesel vehicles;
- C. The following shall apply to permits for all fleet stations:
 - 1. An owner or lessee of a fleet of 25 or more nonexempt vehicles whose place of business is located in areas A or B may apply to the Director for a permit to establish a fleet station. The Director shall not issue or renew any fleet station permit until the Director has found that the permit applicant or permit holder:
 - a. Maintains an established facility for the inspection, repair and maintenance of the fleet. The facility shall be exclusively rented, leased, or owned by the permit applicant or permit holder.
 - b. Employs trained personnel as follows:
 - i. If the facility is for the repair of nondiesel powered vehicles, personnel to perform tune-ups of engines and replacement or repair of carburetion and ignition components; and
 - ii. If the facility is for the repair of diesel powered vehicles, personnel to perform tune-ups and replacement or repair of diesel fuel systems in the vehicle fleet.
 - c. Provides space devoted principally to maintaining or repairing the motor vehicles. The space shall be of sufficient area to conduct maintenance or repair of at least 1 fleet motor vehicle at a time.
 - d. Has obtained a CO and HC emissions analyzer which conforms to the requirements of R18-2-1006 to conduct the emissions inspections.
 - e. Employs a licensed vehicular emissions inspector who performs the necessary inspections. The inspector may be the same person required by subsection (b).
 - f. Provides information to the Department as required in this Section.
 - g. Demonstrates proficiency by passing a Department administered examination on the statutes and rules for the operation and administration of a fleet emissions inspection station. If the permit applicant or permit holder is not in charge of the day-to-day operation of the fleet station, the individual who is in charge of the day-to-day operation of the fleet station shall be required to pass the examination. The individual shall be known as the fleet agent.
 - 2. A dealer's business inventory of vehicles held for resale which exists at the time of inspection of the dealer's fleet for approval of application by the Department shall be used to determine compliance with subsection (1);
 - 3. Application forms may be obtained from the Department;
 - 4. All completed applications shall be submitted to the Department;
 - 5. Before an application for a fleet station permit is approved, an inspection of the premises shall be made by a state inspector;
 - 6. A fleet station shall not inspect or certify vehicles not owned by or leased to the fleet owner. Consignment vehicles shall be tested at a state inspection station according to R18-2-1005(A)(3);
 - 7. A fleet station permit expires 1 year from the date of issuance, except as otherwise provided in Title 41, Chapter 6, Article 6 of the Arizona Revised Statutes;
 - 8. The fleet station permit may be renewed by submittal of a renewal application to the Department within 30 days before expiration;
 - 9. A fleet station permit is valid for only the fleet's inspection facility located at the address shown on the fleet station permit. A separate permit shall be obtained for each inspection facility;
 - 10. Fleet station permits issued by the Director shall not be transferable;
 - 11. If a permit name or address change does not involve a change of ownership, the permit shall be returned to the Department for cancellation and a new permit application shall be submitted. A new permit shall be issued by the Director for the unexpired term;
 - 12. In the event of loss, destruction, or mutilation of a permit, the fleet owner may obtain a duplicate upon furnishing satisfactory proof of the fact. Any fleet that loses a fleet station permit issued by the Director, and after obtaining a duplicate finds the original permit, shall immediately surrender the original permit to the Department;
 - 13. Fleet owners whose permits have expired shall immediately cease fleet inspections, except as otherwise provided in Title 41, Chapter 6, Article 6 of the Arizona Revised Statutes;
 - 14. A fleet station that does not have a vehicular emissions inspector in its employ shall immediately cease to operate as a fleet station and shall notify the Department within 1 day by telephone and in writing within 7 days. All unused vehicle certificates of inspection shall be returned to the Department within 7 days for a refund;
 - 15. A fleet station that does not have a fleet agent in its employ shall immediately cease to operate as a fleet station and shall notify the Department immediately by telephone and in writing within 7 days, unless the permit applicant or other designated employee has taken and passed the examination requirement in subsection (1)(g). The permit applicant or other designated employee shall assume responsibility for the day to day operation of the fleet station. The fleet owner shall notify the Department within 7 days of the designation of a new fleet agent;
 - 16. If a fleet station permit is surrendered, suspended, revoked, or is not renewed, all unused vehicle certificates of inspection shall be returned to the Department for a refund; and
 - 17. A permit holder's surrender of a permit shall not deprive the Department of jurisdiction from investigating or disciplining the permit holder.

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- D.** In addition to the equipment requirements in subsection (B), non-dealer fleets in area A shall have the following:
1. Equipment to perform a steady state loaded emission test as required in R18-2-1006(E)(1);
 2. Equipment to perform a transient loaded emission test as required in R18-2-1006(E)(2);
 3. Equipment for testing evaporative systems for pressure and purge flow as required in R18-2-1006(E)(2); and
 4. Ability to perform the maintenance and quality control requirements of R18-2-1006(E)(2) and "High-Tech I/M Final Technical Guidance".
- E.** The Director may suspend, revoke, or refuse to renew a fleet station permit according to A.R.S. §§ 49-546(F) and 41-1001 et seq. if the permittee, or any person working for or employed by the permittee:
1. Violates any provision of Title 49, Chapter 3, Article 5 of the Arizona Revised Statutes or any provision of this Article;
 2. Misrepresents a material fact in obtaining a permit;
 3. Fails to make, keep, and submit to the Department records for vehicles tested as a permittee;
 4. Fails to meet the requirements of subsections (B) through (D); and
 5. Does not provide a state inspector access to the records required by this Article.
- F.** The fleet station permit and licenses of all fleet inspectors shall be conspicuously displayed within the station.
- G.** A fleet station permit holder shall notify the Department in writing within 7 days of any change of the employment status of a fleet station vehicular emissions inspector.
- H.** The inspection equipment shall meet the following requirements:
1. Each fleet station shall be equipped with at least one emission analyzer which meets the specifications contained in R18-2-1006. Only the equipment necessary to test the types of vehicles in the fleet inventory is required at the fleet stations.
 2. All test equipment and instrumentation shall be maintained in accurate working condition as required by the manufacturer. Instruments requiring periodic calibration shall be calibrated according to instructions and recommendations of the instrument or equipment manufacturer. NDIR emission analyzers shall be registered and calibrated according to R18-2-1027. Calibration records for each instrument other than NDIR emission analyzers, shall be maintained by the fleet station. The calibration records shall indicate the date and authentication of the technician performing each calibration.
 3. The instrument calibration records shall be available for review by the Department.
 4. Working gases used by the fleet station shall be subject to analysis and comparison to the Department's standard gases at any time.
 5. Fleet station equipment shall be subject to both scheduled and unscheduled checks for accuracy and condition by the Department.
- I.** If a fleet station fails to meet all the requirements of subsections (B) and (C)(1), it shall immediately cease to operate as a fleet station until all such requirements are met. If the fleet is cited for failure to have the necessary equipment, it shall not resume operation as a fleet emissions inspection station until compliance is verified by the Department.
- J.** Certificates of inspection shall be processed as follows:
1. A certificate of inspection shall be completed and signed by the vehicular emissions inspector conducting the inspection at the time the vehicle passes inspection. Only the vehicular emissions inspector performing the inspection may sign a certificate of inspection. Certificates shall be issued in numerical order;
 2. For all inspections other than a biennial test, the expiration date shall be 1 year from the date the vehicle passes the mandatory vehicular emissions inspection. For vehicles required to pass a transient loaded emission test, the expiration shall be 2 years after the pass date;
 3. All copies of a certificate of inspection shall be legible;
 4. A certificate of inspection that is incorrect shall have all corrections authenticated by the initials of the vehicular emissions inspector;
 5. Unless inspection data is electronically transmitted under A.R.S. § 49-542(Q), the original completed certificate shall be presented to the Arizona Department of Transportation Motor Vehicle Division in Pima County or the Maricopa County Assessor in Maricopa County for processing of the vehicle's application for title and registration or the Arizona registration card;
 6. The 2nd copy of each completed certificate of inspection, along with the 2nd copy of the Fleet Inspection Report/Monthly Summary, shall be forwarded to the Department monthly, within 2 weeks after the end of the month in which the inspection is conducted;
 7. The 3rd copy of each completed certificate of inspection, along with the original Fleet Vehicle Inspection Report/Monthly Summary, shall be retained for 2 years from the date of inspection;
 8. Unless inspection data is electronically transmitted under A.R.S. § 49-542(Q), the Arizona Department of Transportation Motor Vehicle Division in Pima County or the Maricopa County Assessor in Maricopa County shall accept a signed vehicular emissions certificate as evidence that the vehicle is a fleet inspected vehicle and meets the state's inspection requirements under R18-2-1007(C);

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9. Vehicular emissions certificates shall be purchased from the Department in lots of 25. If the number of vehicles to be inspected by the fleet station is reduced after purchase of the certificates and before the certificate is used, the excess certificates may be returned to the Department for refund or may be used in subsequent years;
 10. The charge for certificates shall be \$5.00 each. Payment for certificates shall be included with an application for certificates; Checks shall be made payable to the Department of Environmental Quality.
 11. Only the Department shall sell or otherwise transfer certificates of inspection;
 12. The fleet station owner shall be responsible for the security and accountability of all the owner's certificates; and
 13. If any certificates are lost or stolen, the fleet station owner shall notify the Department in writing within 24 hours, indicating the number of certificates lost and the serial numbers. The Department may revoke a fleet station permit for refusal or failure to report lost certificates within 24 hours.
- K.** Each fleet shall obtain a Fleet Vehicle Inspection Report/Monthly Summary from the Department and, for all inspections other than diesel inspections and the transient loaded emissions test, record all of the following information at the time of inspection by the vehicular emissions inspector performing the inspection:
1. The VIN of the vehicle passing inspection;
 2. The vehicle's license number, if applicable;
 3. The HC content of the undiluted exhaust recorded at idle;
 4. The CO content of the undiluted exhaust recorded at idle;
 5. The HC content of the undiluted exhaust recorded at 2500 RPM;
 6. The CO content of the undiluted exhaust recorded at 2500 RPM;
 7. Results of a tampering check;
 8. The vehicle model year;
 9. The vehicle make;
 10. The date of inspection;
 11. The license number of the vehicular emissions inspector conducting the inspection;
 12. The signature of the inspector making the entry; and
 13. The serial number of the certificate of inspection, recorded in numerical order;
- L.** For diesel vehicles, the summary described in subsection (J) shall record opacity rather than undiluted HC and CO readings.
- M.** For vehicles required to take the transient loaded emission test, the summary described in subsection (J) shall record the total HC, CO, CO₂ and NO_x measured in grams/mile, the evaporative system integrity and the purge test results. The items in subsections (J)(3) through (7) are not required.
- N.** Upon request, a state inspector shall be allowed access to and shall be allowed to photocopy on or off the premises the original Fleet Vehicle Inspection Report/Monthly Summaries, the 2nd copies of certificates of inspection, and any other related documents.
- O.** Fleet vehicles shall be subject to inspection by state inspectors.
- P.** A certificate of waiver may be issued by a fleet inspector other than an auto dealer licensed to sell used motor vehicles under Title 28 of the Arizona Revised Statutes if the requirements of R18-2-1008(A), R18-2-1009, and R18-2-1010 are met according to the following procedure:
1. A certificate of waiver is completed and signed by the vehicular emissions inspector conducting the inspection following completion of a fleet inspection waiver report. The report shall be forwarded to the Department within 3 business days from the date of issuance of the certificate of waiver. A fleet inspection waiver report shall be provided with the purchase of each certificate of waiver. The fleet inspection waiver report shall contain a description of the vehicle, test results, and repairs performed;
 2. The expiration date of the certificate of waiver shall be 2 years from the date the waiver is granted for a vehicle required to take a transient loaded emission test, and 1 year for all other vehicles;
 3. All copies of the certificate of waiver shall be legible;
 4. A certificate of waiver that is incorrect shall have all corrections authenticated by the initials of the vehicular emissions inspector;
 5. Unless inspection data is electronically transmitted under A.R.S. § 49-542(Q), the original completed certificate shall be presented to the Arizona Department of Transportation Motor Vehicle Division in Pima County or the Maricopa County Assessor in Maricopa County for processing of either the vehicle's application for title and registration or the Arizona registration card;
 6. The 2nd copy of each completed certificate of waiver shall accompany the completed fleet inspection waiver report;
 7. The 3rd copy of each completed certificate of waiver, along with a copy of the fleet inspection waiver report, shall be retained by the fleet station owner for 2 years from the date of inspection;
 8. Unless inspection data is electronically transmitted under A.R.S. § 49-542(Q), the Arizona Department of Transportation Motor Vehicle Division in Pima County or the Maricopa County Assessor in Maricopa County shall accept a signed vehicle emissions certificate as evidence that the vehicle is a fleet inspected vehicle and meets the state's inspection requirements. The certificate must be complete and shall be current;

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9. The charge for certificates of waiver shall be \$5.00 each. Payment for certificates shall be included with an application for certificates. Checks shall be made payable to the "Department of Environmental Quality.";
10. Only the Department shall sell or otherwise transfer certificates of waiver;
11. The fleet station owner shall be responsible for the security and accountability of all the owner's certificates; and
12. If certificates are lost or stolen, the fleet station owner shall notify the Department in writing within 24 hours, indicating the number of certificates lost and the serial numbers. The Department may revoke a fleet station permit for refusal or failure to report lost certificates within 24 hours.

R18-2-1019. Fleet Station Procedures and Permits

A. The following requirements apply to issuance and renewal of fleet station permits:

1. An owner or lessee of a fleet of 25 or more nonexempt vehicles whose place of business is located in areas A or B may apply to the Director for a permit to establish a fleet station. A dealer's business inventory of vehicles held for resale, counted cumulatively over the previous 12 months at the time of application review by the Department shall be used to determine compliance with this subsection.
2. Application forms for fleet station permits shall be obtained from the Department. All completed applications shall be submitted to the Department. Applications shall be considered "administratively complete" when:
 - a. The Department has received a completed application form and fleet agent designation form;
 - b. The applicant or designated employee successfully completes the fleet agent examination; and
 - c. The applicant has allowed the Department to conduct a site inspection.
3. Before an original application for a fleet station permit may be approved, an inspection of the premises to determine compliance with subsection (B) and (C) shall be made by a state inspector.
4. A fleet station permit shall expire 1 year from the date of issuance, except as otherwise provided in A.R.S. § 41-1064(B). The fleet station permit shall be renewed by submittal of a renewal application to the Department at least 30 days prior to expiration.
5. A fleet station permit shall only be applicable to the fleet's inspection facility located at the address shown on the fleet station permit. If a fleet owner wishes to have a permit for inspection facilities at more than 1 address, the fleet owner shall apply for a permit for each facility.
6. Fleet station permits issued by the Director shall not be transferable.
7. When permit name or address changes do not involve a change of ownership, the permit shall be returned to the Department for cancellation and a new permit application shall be submitted. The Director shall cancel the returned permit and issue a new permit for the unexpired term.
8. In the event of loss, destruction, or mutilation of the permit, the person to whom it was issued may obtain a duplicate upon furnishing satisfactory proof of the fact. Any fleet that loses a fleet station permit issued by the Director, and, after obtaining a duplicate, finds the original, shall immediately surrender the original permit to the Department.

B. The permit applicant or permit holder, or its employees, shall own or lease the following equipment and maintain it in good working condition:

1. If the permit is for the inspection of nondiesel-powered vehicles:
 - a. Ignition timing light with timing advance tester;
 - b. Ignition operated tachometer;
 - c. Dwell meter;
 - d. Socket tool for replacing spark plugs;
 - e. Spark-plug gap setting tool;
 - f. Tools for replacing or adjusting carburetors or fuel injection systems, distributors, fuel pumps, and ignition coils;
 - g. At least 1 NDIR CO and HC emissions analyzer which conforms to the requirements of R18-2-1006 to conduct the emissions inspections. Only the equipment necessary to test the types of vehicles in the fleet inventory is required at the fleet stations;
 - h. Digital Volt/Ohm Meter;
 - i. Scan Tool capable of communications with OBD data stream of the fleet vehicles; and
 - j. Pressure test equipment for the gas cap integrity test.
2. If the permit is for the inspection of diesel-powered vehicles:
 - a. Tools for removing fuel pumps and injectors;
 - b. Fuel pressure gauge;
 - c. Opacity meter. The meter shall meet J1667 specifications for vehicles with a GVWR greater than 8,500 lbs. in area A;
 - d. Tools required by the vehicle manufacturer for field setting of fuel injectors, inlet and exhaust valve clearance, governors, and throttle controls; and
 - e. A dynamometer for testing light duty diesel vehicles
3. If the permit is for a nondealer fleet in area A, in addition to the requirements in subsections (1) and (2):
 - a. Equipment to perform a steady state loaded emission test as required in R18-2-1006(E)(1)(a);

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- b. Equipment to perform a transient loaded emission test as required in R18-2-1006(E)(2)(b);
 - c. Equipment to perform the evaporative system integrity as required in R18-2-1006(E)(2)(c); and
 - d. Equipment to perform the maintenance and quality control requirements of R18-2-1006(E)(2) and "IM240 and Evaporative Test Guidance".
- C.** A fleet's inspection facility shall comply with the following requirements:
- 1. The facility shall include space devoted principally to maintaining or repairing the fleet's motor vehicles. The space shall be large enough to conduct maintenance or repair of at least 1 fleet motor vehicle.
 - 2. The facility shall be exclusively rented, leased, or owned by the permit applicant or permit holder.
- D.** A fleet owner shall employ the following personnel:
- 1. If the facility is for the repair of nondiesel-powered vehicles, at least 1 person to perform tune-ups of engines and replacement or repair of carburetion and ignition components.
 - 2. If the facility is for the repair of diesel-powered vehicles, at least 1 person to perform tune-ups and replacement or repair of diesel fuel systems in the vehicle fleet.
 - 3. A licensed vehicle emissions inspector who will perform the necessary inspections. This inspector may be the same person required by subsection (1) or (2).
 - 4. A fleet agent, who shall be in charge of the day to day operation of the fleet and who demonstrates proficiency by passing a Department-administered examination annually, with a score equal to or greater than 80%, on the statutes and rules governing the operation and administration of a fleet emissions inspection station. The fleet owner shall designate the fleet agent on a form obtained from the department.
- E.** Unless inspected at a state station, vehicles owned by or leased to a holder of a fleet emissions inspection station permit shall be inspected according to R18-2-1006(E) through (I), except as follows:
- 1. Dealer fleet vehicles in area A held for resale and all area B fleet vehicles, with a model year of 1981 or newer and other than diesel-powered, shall be required to take and pass both the curb idle test specified in R18-2-1006(F)(1) and a 2,500 RPM unloaded fast idle test as follows:
 - a. The vehicle's engine shall be operated at 2,500, ± 300 RPM, for up to 30 seconds with the transmission in neutral.
 - b. HC and CO exhaust emissions concentrations shall be recorded after readings have stabilized or at the end of 30 seconds, whichever occurs 1st, and compared to the loaded cruise standards in Table 2.
 - 2. Dealer fleet vehicles in area A and area B held for resale, with a model year of 1980 or older and other than diesel-powered, shall be required to take and pass a curb idle test as specified in R18-2-1006(F)(1). The loaded cruise test standards in Table 2 shall apply to fleet vehicles tested under the 2,500 RPM unloaded fast idle test.
 - 3. Dealer fleet vehicles in area A held for resale with a model year of 1975 or newer and other than diesel-powered, shall be required to take and pass a tampering inspection as specified in R18-2-1006(E)(6).
 - 4. Dealer fleet vehicles in area B held for resale with a model year of 1975 or newer and other than diesel-powered, shall be required to take and pass a tampering inspection as specified in R18-2-1006(F)(5).
 - 5. Consignment vehicles shall be tested at a state inspection station in accordance with R18-2-1005(A)(3).
- F.** The fleet inspector shall complete and process the forms for vehicle inspection as follows, except government entity fleets shall issue and process government vehicle certificates of inspection under R18-2-1017:
- 1. Certificates of inspection shall be processed as follows:
 - a. A certificate of inspection shall be completed and signed by the vehicle emissions inspector conducting the inspection at the time the vehicle passes inspection. Only the vehicle emissions inspector performing the inspection may sign a certificate of inspection and the inspector shall initial all corrections. Certificates shall be issued in numerical order;
 - b. For all inspections other than a biennial test, the expiration date shall be 1 year from the date the vehicle passes the mandatory vehicle emissions inspection. For vehicles required to pass a transient loaded emission test, the expiration shall be 2 years after the pass date;
 - c. All copies of a certificate of inspection shall be legible;
 - d. Unless inspection data is electronically transmitted under A.R.S. § 49-542(O), the original completed certificate shall be presented to the Arizona Department of Transportation Motor Vehicle Division for processing of the vehicle's application for title and registration or the Arizona registration card, and the Arizona Department of Transportation Motor Vehicle Division shall accept a signed vehicle emissions certificate as evidence that the vehicle is a fleet-inspected vehicle and meets the state's inspection requirements under R18-2-1007(C);
 - e. The 2nd copy of each completed certificate of inspection, along with the 2nd copy of the Fleet Inspection Report/Monthly Summary, shall be forwarded to the Department monthly, within 2 weeks after the end of the month in which the inspection is conducted;
 - f. The 3rd copy of each completed certificate of inspection, along with the original Fleet Vehicle Inspection Report/Monthly Summary, shall be retained for 2 years from the date of inspection;

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- g. Vehicle emissions certificates shall be purchased from the Department in lots of 25. If the number of vehicles to be inspected by the fleet station is reduced after purchase of the certificates and before the certificate is used, the excess certificates may be returned to the Department for refund or may be used in subsequent years;
 - h. The fee for a certificate of inspection shall be fixed by the Director according to A.R.S. §49-543, and shall be based upon the director's estimated costs to the state of administering and enforcing the provisions of this article as they apply to issuance of certificates of inspections. Payment for certificates shall be included with an application for certificates; Checks shall be made payable to the Department of Environmental Quality.
 - i. Only the Department shall sell or otherwise transfer certificates of inspection;
 - j. The fleet station owner shall be responsible for the security and accountability of all the owner's certificates;
 - k. If any certificates are lost or stolen, the fleet station owner shall notify the Department in writing within 24 hours, indicating the number of certificates lost and the serial numbers. The Department may revoke a fleet station permit for refusal or failure to report lost certificates within 24 hours;
 - l. In the event of loss destruction or mutilation of an original completed certificate of inspection, a Director's certificate may be obtained from the Department by hand delivery of the following:
 - i. The 2nd or 3rd copy of the lost certificate of inspection;
 - ii. The original of the Fleet Vehicle Inspection Report/Monthly Summary;
 - iii. A cover letter explaining the situation which caused the loss of the original certificate of inspection; and
 - iv. Payment of a fee to cover the cost of issuance of the Director's certificate. The fee for a Director's certificate shall be fixed by the Director according to A.R.S. §49-543, and shall be based upon the director's estimated costs to the state of administering and enforcing the provisions of this article as they apply to issuance of Director's certificates. Checks shall be made payable to the Department of Environmental Quality; and
 - m. In the event an original certificate of inspection is voided by a fleet station. The original of the voided certificate shall be matched to the corresponding 3rd copy of the certificate and retained at the fleet station for 2 years from the date of inspection.
2. The Fleet Vehicle Inspection Report/Monthly Summary shall be obtained from the Department. Upon request, a state auditor shall be allowed access to and shall be permitted to photocopy, on or off the premises, the original fleet vehicle inspection report/monthly summaries, the 2nd copies of certificates of inspection, and any other related documents. All inspections other than the transient loaded emissions test, shall contain all of the following information which shall be recorded at the time of inspection by the vehicle emissions inspector performing the inspection:
- a. The VIN of the vehicle passing inspection;
 - b. The vehicle's license number, where applicable;
 - c. The HC content of the undiluted exhaust recorded at idle;
 - d. The CO content of the undiluted exhaust recorded at idle;
 - e. The HC content of the undiluted exhaust recorded at 2,500 rpm;
 - f. The CO content of the undiluted exhaust recorded at 2,500 rpm;
 - g. When applicable, results of a tampering check;
 - h. The vehicle model year;
 - i. The vehicle make;
 - j. The date of inspection;
 - k. The license number of the vehicle emissions inspector conducting the inspection;
 - l. The signature of the inspector making the entry;
 - m. The serial number of the certificate of inspection, recorded in numerical order;
 - n. ~~For diesel vehicles, the summary shall record opacity rather than undiluted HC and CO readings;~~
 - ~~n.e.~~ For vehicles required to take the transient loaded emission test, the summary shall record the total HC, CO, CO₂ and NO_x measured in grams/mile, and the evaporative system integrity test result rather than the items in (c) through (g);
 - ~~o.p.~~ Upon request, a state inspector shall be allowed access to and shall be allowed to photocopy on or off the premises the original Fleet Vehicle Inspection Report/Monthly Summaries, the 2nd copies of certificates of inspection, and any other related documents; and
 - ~~p.e.~~ The registration number of the registered analyzer or opacity meter used to perform the inspection.
 - q. For light duty diesel vehicles, the summary shall record opacity rather than undiluted HC and CO;
 - r. For heavy duty diesel vehicles:
 - i. The time of the inspection;
 - ii. The ambient temperature;
 - iii. The corrected barometric pressure;
 - iv. The relative humidity at the time of inspection;
 - v. The engine year and cubic inch or liter displacement;
 - vi. The GVWR;

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C. Issuing Alternative Fuel Certificates

The department or its Agent shall issue an Alternative Fuel Certificate according to A.R.S. § 28-5805 if the vehicle is currently powered by an alternative fuel, as defined in A.R.S. § 1-215.4.

R18-2-1022. Procedure for Waiving Inspections Due to Technical Difficulties

- A. Any ~~vehicle~~ ~~vehicular~~ emissions station manager employed by an official emissions inspection station may issue a Director's certificate for any vehicle that cannot be subjected to the inspection required by this Article because of technical difficulties inherent in the manufacturer's design or construction of the vehicle. A copy of the completed Director's certificate shall be forwarded to the Department.
- B. The form for the Director's certificate will be supplied by the Department.

R18-2-1023. Certificate of Exemption for Out-of-State Vehicles

- A. When a vehicle being registered or reregistered in area A or area B requires an emission test and will not be available for inspection within the state during the 90-day period ~~before~~ ~~prior to~~ the emissions compliance expiration date, and an emissions inspection is not available for that class of vehicle at an official inspection station where the vehicle is located, the owner or owner's agent may apply in writing to the Department for a certificate of exemption.
- B. The owner or owner's agent shall complete the affidavit portion of the certificate of exemption form, and submit it to the Department as evidence of meeting the requirements of this Article.
- ~~C. When the application for a certificate of exemption indicates that the vehicle has been available within the first 60 days of the 90-day period prior to emission compliance expiration but the vehicle owner demonstrates to the Department that it would be impracticable to return the vehicle to the state for the inspection prior to emission compliance expiration, a Director's certificate may be issued in lieu of an exemption.~~
- ~~C.D.~~ A certificate of exemption shall be issued by the Department to a vehicle that has passed a statutory emissions inspection in another state during the 90 days ~~before~~ ~~prior to~~ emissions compliance expiration upon submission of the inspection compliance document issued by the governmental entity conducting the inspection program.
- ~~D.E.~~ The charge for certificates of exemption shall be fixed by the Director according to A.R.S. §49-543, and shall be based upon the director's estimated costs to the state of administering and enforcing the provisions of this article as they apply to issuance of certificates of exemption. \$3.00 each. The payment for the certificates shall be included with the application for certificates. Checks shall be made payable to the "Department of Environmental Quality."

R18-2-1025. Inspection of Contractors Equipment and Personnel State Stations

- A. State stations shall be inspected by state inspectors as follows:
1. In Area A:
 - a. Automated emission analyzers, calibrated and maintained according to "IM240 and Evaporative Test Guidance", shall be inspected using state station field calibration gases at least once every other month. ~~twice within each 30 day period~~
 - ~~2-b.~~ Opacity meters shall be inspected for accuracy using a neutral density filter at least once each month ~~twice within each 30 day period.~~
 - ~~3-c.~~ During audits, a check shall be made for tampering, worn instrumentation, blocked filters, and other conditions which would impair accurate sampling.
 4. Functional checks of dynamometer accuracy including roll speed and power absorption shall be performed at least quarterly.
 2. In Area B:
 - a. Automated emission analyzers shall be inspected using state station field calibration gases at least 2 times each month.
 - b. Opacity meters shall be inspected for accuracy using a neutral density filter at least 2 times each month.
 - c. During audits, a check shall be made for tampering, worn instrumentation, blocked filters, and other conditions which would impair accurate sampling.
 - d. Functional checks of dynamometer accuracy including roll speed and power absorption shall be performed at least quarterly.
- B. Equipment used to perform transient loaded emission tests, shall be audited at least twice annually for all of the following:
1. Constant volume sampler critical flow and calibration.
 2. Optimization of the flame ionization detector fuel/air ratio using methane.
 3. Proper dynamometer coast down, roll distance and inertia weight.
 4. Ability to detect background pollutant concentrations.
 5. Evaporative ~~purge and~~ integrity analysis systems for accuracy, response time and other criteria consistent with "IM240 and Evaporative Test Guidance" ~~High Tech IM Technical Guidance~~
 6. Functional gas cap analysis equipment.
- C. If an equipment audit of an inspection lane in either area A or area B indicates that a state station analyzer is not operating within tolerance contractually specified, the state inspector shall immediately reaudit the failing equipment. If the equip-

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ment fails the ~~2nd~~ second audit, station management shall be notified immediately and shall either replace or repair the failing equipment or close the affected lane until such time as the equipment is properly repaired and accuracy verified. A copy of the analyzer readings shall be provided to the state station manager.

- D. Any state station analyzer retired by the contractor may be returned to service upon its repair and verification of a passing calibration audit. The Department shall be notified immediately in writing upon its return to service, and the contractor's calibration results of the subject analyzer shall be supplied to the Department.
- E. Performance audits shall be conducted by state inspectors to determine whether vehicle emissions inspectors are correctly performing inspections and other related functions as follows:
1. Overt audits at least 2 times each ~~twice per~~ year for each inspection lane:
 - a. Check for proper document security.
 - b. Check for required recordkeeping including inspector licenses.
 - c. Observation and written evaluation of each vehicle emissions inspector's ability to perform an inspection.
 - ~~2. Covert audits at least 1 time each once per year per licensed inspector employed by the independent contractor:~~
 - ~~a. Remote visual observation of inspector performance.~~
 - ~~b. Site visits using covert vehicles set to fail inspection.~~
 - ~~2.3~~ Station and inspector records shall be reviewed at least monthly to assess station performance and identify problems indicating potential fraud or incompetence.
 - ~~3.4~~ In the event that a vehicle emissions ~~an~~ inspector fails any of the above, the vehicle emissions inspector's license may be suspended or revoked according to R18-2-1016(A)(4) ~~the provisions of this Article~~.
- F. On-road emissions analyzers shall be inspected by a state inspector at least monthly using dry-gas analysis equipment.
- G. If an equipment audit indicates that an on-road emissions analyzer is not operating within tolerance as contractually specified, the state inspector shall immediately re-audit the failing equipment. If the equipment fails the 2nd audit, the inspector shall notify the contractor immediately and the equipment shall be repaired or replaced as described in subsections (C) and (D).

R18-2-1026. Inspection of Fleet Stations

- A. Equipment used by fleet stations shall be inspected by state inspectors for accuracy as follows:
1. Emission analyzers shall be inspected using field calibration gases at least quarterly ~~once within each three-month period~~.
 2. The opacity meters used by fleet stations shall be inspected by state inspectors for accuracy using a neutral density filter at least quarterly ~~once within each three-month period~~.
 3. Equipment used to perform transient loaded emissions tests shall be inspected according to ~~in accordance with~~ R18-2-1025(A) and (B).
- B. A fleet station's emissions analyzer shall not be used for an official emissions inspection if it does not read the state's field calibration gases within the tolerances prescribed by subsection (J) ~~of this Section~~, if there is a leak in the sampling systems or the calibration port, or if the sample handling system is restricted.
- C. The fleet station shall be responsible for calibration of the fleet station emission analyzer.
- D. A state inspector may, at the inspector's discretion, allow an employee of the fleet station, or someone other than a state inspector and authorized by the fleet station, to calibrate the analyzer utilizing the state's field calibration gases.
- E. Any technician for a fleet station emission analyzer may purchase calibration gases from a private source and submit them to the Department to have their HC and CO concentrations assigned by the Department.
- F. A state inspector shall tag a fleet station emission analyzer upon determining that the analyzer does not meet the requirements of this Section. Such analyzer shall not be used for inspection until the tag is removed by a state inspector or a licensed repair facility. The tag shall contain the following information as a minimum:
1. A brief statement that the analyzer does not meet state operating requirements for official emissions inspection purposes,
 2. The values of the state field calibration gases used and the analyzer readings obtained,
 3. The date of the state's inspection,
 4. The signature of the state inspector tagging the analyzer, and
 5. The reason for tagging.
- G. An analyzer tagged under ~~in accordance with~~ subsection (F) ~~of this Section~~ shall not be returned to service until its accuracy is verified by a state inspector or an emissions analyzer repair person certified under ~~pursuant to~~ R18-2-1028.
- H. All fleet stations are responsible for periodic maintenance and calibrations of their emissions analyzers. Repair and maintenance requirements are prescribed in R18-2-1019.
- I. A fleet station may lease or borrow an emission analyzer for temporary use while the station's approved analyzer is being repaired provided that a state inspector has approved its use.
- J. Fleet station analyzers used for transient loaded testing shall conform to and be quality control checked according to ~~in accordance with~~ "IM240 and Evaporative Test Guidance" ~~High-Tech I/M Final Technical Guidance~~. All other fleet station emission analyzers used for the inspections are required to read the ~~field~~ calibration gases within the following tolerances:

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1. Within plus 0.50% CO to minus 0.25% CO in the range from 0 to 2% CO;
 2. Within plus 1.00% CO to minus 0.50% CO in the range from 2% to 10% CO;
 3. Within plus 60 PPM HC to minus 30 PPM HC in the range from 0 to 500 PPM HC when read as N-HEXANE; and
 4. Within plus 200 PPM HC to minus 100 PPM HC in the range from 500 to 2,000 ~~2000~~ PPM HC when read as N-HEXANE.
- K.** All fleet station opacity meters used for the inspections are required to read the equivalent opacity value of neutral density filters within ± plus or minus 5% opacity over the range of the meter.
- L.** A state inspector shall conduct performance audits to determine whether inspectors are correctly performing all tests and other related functions as follows:
1. Overt audits at least 2 times each ~~twice per~~ year for each facility:
 - a. Check for proper document security.
 - b. Check for required recordkeeping including inspector licenses.
 - c. Observe and make a written evaluation of each inspector's ability to perform an inspection.
 2. Station and inspector records shall be reviewed at least monthly to assess fleet performance and identify problems indicating potential fraud or incompetence.

R18-2-1027. Registration of Emission Analyzers and Opacity Meters

~~**A.** Any equipment repair person or facility or registered analyzer holder who calibrates or services NDIR HC and CO exhaust emission analyzers may purchase calibration gases and submit these gases to the Department to have their hexane and CO concentrations assigned or may purchase gas blends specified by the Department from approved sources. Approved sources will be published by the Department.~~

~~**A.B.** An automotive repair facility may apply to the Department at no charge for registration of NDIR HC and CO analyzers and opacity meters. All NDIR emission analyzers and opacity meters utilized by fleet inspection stations shall be registered as part of the fleet station permit approval. Application forms to register an analyzer or opacity meter shall be obtained from the Department. Completed applications shall be submitted to the Department. Applications shall be considered "administratively complete" when:~~

1. The Department has received an completed application;
2. The applicant or employee successfully completes the "certified technician" examination; and
3. The applicant has allowed the Department to conduct a site inspection.

~~**B.C.** All registered analyzers shall be calibrated at least monthly once each month, by a certified technician, with calibration gases approved by the Department. Registered opacity meters shall be calibrated according to manufacturer's specifications before performing the 1st inspection in any month.~~

~~**C.D.** Registered analyzers shall meet the requirements of R18-2-1006(F)(6)(a). Calibration must be verified by a state inspector before an analyzer may be registered. To qualify for registration the analyzer must read the value of the ~~field~~ calibration gases within the following tolerances:~~

1. Plus 0.50% CO to minus 0.25% CO in the range from 0 to 2% CO;
2. Plus 1.00% CO to minus 0.50% CO in the range from 2% to 10% CO;
3. Plus 60 PPM HC to minus 30 PPM HC in the range from 0 to 500 PPM HC when read as N-HEXANE; and
4. Plus 200 PPM HC to minus 100 PPM HC in the range from 500 to 2,000 ~~2000~~ PPM HC when read as N-HEXANE.

~~**D.E.** Each registered opacity meter and analyzer shall have a unique registration number assigned by the Department. A repair and calibration log shall be maintained for each registered opacity meter and analyzer on a form prescribed and provided by the Department. The log shall be made available to any state inspector on request and shall remain the property of the Department.~~

~~**E.F.** A state inspector shall tag a registered opacity meter or analyzer upon determining that the opacity meter or analyzer does not meet the requirements of this Section. Such opacity meter or analyzer shall not be used for the purposes of R18-2-1010 or R18-2-1019 until the tag is removed by a state inspector or an emission analyzer repair person certified under ~~pursuant to~~ R18-2-1028 after the accuracy is verified.~~

1. The tag shall be returned to the Department within 2 ~~two~~ working days after the calibration audit.
2. The tag shall be in the form of a U.S. postcard and provide the following information:
 - a. Analyzer registration number or and/or opacity meter registration number,
 - b. Reason for failure,
 - c. Signature of state inspector issuing the tag,
 - d. Date of issuing the tag,
 - e. Details of repairs performed,
 - f. CO and HC concentrations of calibration gases used to confirm analyzer accuracy,
 - g. Analyzer readings when gases were introduced into the analyzer sampling probe, and
 - h. Repair person's certification number and signature or signature of state inspector removing the tag and date of calibration audit.

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~~E.G.~~ All holders of registered emissions analyzers or opacity meters must employ a person certified under in accordance with R18-2-1028 or licensed under in accordance with R18-2-1019 as a condition of registration.

~~G.H.~~ Holders of registered emission analyzers or opacity meters shall notify the Department within 7 seven working days of the change in employment of any licensed inspector or certified mechanic. Analyzer registration shall become invalid immediately when no licensed inspector or certified mechanic is employed.

R18-2-1028. Certification of Users of Registered Analyzers and Analyzer Repair Persons

- A. A person may be certified to use a registered analyzer and opacity meter provided:
1. Application is made to the Department; and
 2. Proficiency is demonstrated by passing an examination in the following areas:
 - a. Equipment used in the inspection and control of emissions,
 - b. Types of emissions inspection failures,
 - c. Correction procedures for excessive HC emissions,
 - d. Correction procedures for excessive CO emissions,
 - e. Proper carburetor adjustment procedures, and
 - f. Diesel fuel injection systems.
- B. Certification under pursuant to subsection (A) shall be valid for 1 one year from date of issue and may be renewed, under the conditions of subsection (A), by submitting a renewal application to the Department 30 days before prior to the current certification expiration date.
- C. Persons certified under pursuant to subsection (A) shall notify the Department within 7 seven working days of any change in employment status.
- D. A person may be certified to repair and remove tags from an emission analyzer under pursuant to R18-2-1027 provided:
1. Application is made to the Department;
 2. Proficiency is demonstrated by passing an examination in the following areas:
 - a. State and federal regulations governing emissions analyzers,
 - b. Fundamentals of emission analyzer operation, repair and preventive maintenance, and
 - c. Theory of operation of vehicle vehicular emissions control devices.
- E. Certification under pursuant to subsection (D) shall be valid for 1 one year from date of issue and may be renewed, under the conditions of subsection (D), by submitting a renewal application to the Department 30 days before prior to the current certification expiration date.
- F. Each person licensed or certified under pursuant to this Section shall receive a unique nontransferable certification number.
- G. The Department may suspend, revoke or refuse to renew the certification of a user of a registered analyzer or an analyzer repair person if the person has violated any provision of this Article.

R18-2-1029. Vehicle Emission Control Devices

For the purposes of A.R.S. §§ 28-955, 28-3254(D) and 49-447 purpose of A.R.S. § 49-447, each registered motor vehicle shall have in operating status and condition all emission control devices which were installed by the vehicle manufacturer to comply with federal requirements for motor vehicle emissions or equivalent replacement parts or devices.

R18-2-1030. Visible Emissions; Mobile Sources

- A. Any vehicle other than a diesel-powered vehicle or 2-stroke two-stroke vehicle that emits any visible emissions for 10 ten consecutive seconds or more is "excessive" for the purposes of A.R.S. § 28-3254(C) and 28-955 28-955(B).
- B. No diesel-powered vehicle shall emit any visible emissions in excess of 20 percent visual opacity for 10 consecutive seconds or more at or below 2,000 2000 feet altitude, in excess of 30 percent visual opacity for 10 consecutive seconds or more above 2,000 2000 feet and at or below 4,000 4000 feet altitude, nor in excess of 40 percent visual opacity for 10 consecutive seconds above 4,000 4000 feet altitude. Exceeding these standards shall cause the vehicle to fail inspection if being inspected under pursuant to R18-2-1006 and is presumed to be "excessive" for the purposes of A.R.S. § 28-3254(C) and 28-955 28-955(B).

R18-2-1031. Standards for Evaluating the Oxidation Efficiency of a Aftermarket Catalytic Converter

- ~~A.~~ A gasoline-powered vehicle requiring a catalytic converter test under R18-2-1008(C) shall be tested using the following Catalyst Efficiency Test Procedure, except for a vehicle which requires an Idle-Only Inspection.
1. Immediately after a vehicle has completed an Inspection and Maintenance (I/M) test in the waiver lane, the exhaust sampling cone shall be removed from the tailpipe. The vehicle shall be left on the dynamometer with the engine idling and the transmission in neutral. The vehicle must be at normal operating temperature.
 2. For the catalyst test, the dynamometer and the constant volume sampler shall remain at the settings used for the vehicle's I/M test.
 3. The inspector shall insert the sampling tube for the A/F analyzer into the tailpipe of the vehicle.

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4. The inspector shall accelerate the vehicle to 40 ± 2.5 MPH and maintain a steady state operating mode for the duration of the test. Once the vehicle has obtained speed the test shall be initiated.
 5. Once the test is initiated, a 2 minute stabilization period shall begin. During the stabilization period, the inspector shall monitor the A/F analyzer to insure that the A/F is 14.0 or greater. If the A/F is less than 14.0, the inspector shall abort the test.
 6. If the A/F is 14.0 or greater, the exhaust sampling cone shall be repositioned for exhaust sampling.
 7. Once the stabilization period has ended, the total hydrocarbon and methane concentrations and the A/F ratio shall be continuously recorded for 2 minutes.
 8. At the end of the 2 minute sampling period, the vehicle shall be stopped, the exhaust sampling cone and the A/F analyzer sampling probe removed from the tailpipe, and the vehicle removed from the dynamometer.
 9. The mean total hydrocarbon concentration shall be divided by the mean methane concentration for the recorded values of the test, to produce a ratio (R) of total hydrocarbon to methane. This ratio, R, shall be applied to the formula: Catalyst Efficiency (%) = -3 (R) +100.
 10. A vehicle passes the test if the Catalyst Efficiency (%) is 75% or greater.
 11. The test result for a nonpassing vehicle with a mean A/F equal to, or less than, 14.3 shall be ruled as inconclusive, and the vehicle cannot be granted a waiver until malfunction is corrected and the vehicle passes a catalyst efficiency retest.
 12. A vehicle failing the test cannot be granted a waiver according to R18-2-1008(C)(1).
- B. Analytical equipment required to perform the Catalyst Efficiency Test Procedure shall meet the following requirements:
1. Analyzer Specifications
 - a. Each analyzer shall meet performance specifications of the 40 CFR 86 subparts B, D, and N with respect to accuracy, precision, drift, interference and noise.
 - b. Total hydrocarbon analysis shall be determined by a flame ionization detector. The analyzer shall be single range with a calibration curve covering at least the range of 0 to 300ppm Carbon.
 - c. Methane analysis shall be determined by a flame ionization detector equipped with a non-methane cutter capable of oxidizing 98% of the hydrocarbons (except methane) while more than 90% of the methane remains unchanged. The analyzer shall be single range with a calibration curve covering at least the range of 0 to 30ppm.
 - d. Engine A/F mixture analysis shall be determined by a Universal Exhaust Gas Oxygen Sensor. The range shall be 8.0 to 25.5 A/F for gasoline with an accuracy of ±2% of point and a response time of less than 150 millisecond.
 2. Analyzer Performance Verification and Calibration:
 - a. Verification of analyzer performance shall be conducted in accordance with manufacturer recommendations.
 - b. Upon initial installation, and monthly thereafter, a 10-point calibration curve shall be generated for each total hydrocarbon and methane analyzer. A gas divider, employing equally spaced points may be used to generate the calibration curve.
 - i. Each calibration curve generated shall fit the data within ± 2.0% at each calibration point.
 - ii. Each calibration curve shall be verified for each analyzer with a confirming calibration standard between 15-80% of full scale that is not used for curve generation. Each confirming standard shall be measured by the curve within 2.5%.
- A. All new aftermarket converters that are installed shall meet the following standards:
1. The converters require limited vehicle durability testing by the converter manufacturer on worst case vehicles in each application category and the converters shall meet the exhaust emissions control efficiency requirements listed at Table 7. The converter manufacturer shall demonstrate that the converters meet the applicable performance standards described in this subsection after 25,000 miles, which is considered half their useful lives.
 2. Two vehicles in each application category are required to conduct the mileage accumulation and testing. The application category shall be identified by the converter manufacturer. Application category can refer to the types of vehicles and/or engines the converters are to be installed on, or the types of OEM converters the aftermarket converters are to replace. In addition, the converters must be identified as one of the following:
 - a. Oxidation converter;
 - b. Three-way converter; or
 - e. Three-way plus-oxidation converter.
 3. The vehicles for which the converter is an appropriate installation shall be identified by the converter manufacturer. The converter manufacturers shall supply this information with each converter so that the installer can easily and clearly know the vehicle application.
 4. The worst case vehicles in each application category shall be tested by the converter manufacturer. Absent any information supplied by the converter manufacturer, the worst case for each application category shall be the highest test weight/largest engine displacement within the application category. This combination is determined by selecting the largest engine displacement within the highest test weight class. Test weight is described in Title 40 Code of Federal Regulations, Section 86.129-80, which, as amended as of November 14, 1978, is hereby adopted and incorporated herein by reference and is on file with the Department and the Office of the Secretary of State.

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5. Durability mileage accumulation shall be conducted on at least two test converters for 25,000 miles each, using the mileage cycle for track mileage accumulation in Appendix IV of Title 40 Code of Federal Regulations, part 86, which as amended as of June 28, 1977, is hereby adopted and incorporated herein by reference and is on file with the Department and the Office of the Secretary of State, or one that is typical of in-use operation and equal to that cycle for road mileage accumulation. Commercially available unleaded fuel and oils of the grade and quality specified by the manufacturers in the owner's manual shall be used. The vehicles shall be set to manufacturer's specifications, equipped with the test converters for the entire mileage accumulation and records of all vehicle and engine maintenance shall be kept. No maintenance of the converters is permitted. Different vehicles may be used for mileage accumulation and testing if they are equal with respect to emission related parameters (i.e., "slave" vehicles may be used for testing).
6. As an alternative to vehicle mileage accumulation, accelerated bench testing which simulates the 25,000 miles accumulation may be used if it can be demonstrated to the state of Arizona and to the United States Environmental Protection Agency in advance that the procedures are at least as stringent as vehicle mileage accumulation.
7. At the end of the mileage accumulation, two cold start Federal Test Procedures tests (including the heat build portion of the evaporative test) described in Title 40 Code of Federal Regulations Sections 86.130-78, 131-78, 132-82, 133-78, and 135-82, which, as amended as of June 28, 1977, March 5, 1980, November 16, 1983, and December 10, 1984, respectively, are hereby adopted and incorporated herein by reference and are on file with the Department and the Office of the Secretary of State, shall be performed on each vehicle. The pair of test results shall be considered consistent if they are within 10% for HC and CO and 15% for nitrogen oxides. If the results are consistent, the results shall be averaged to obtain the with converter emissions. If the pair are not consistent, i.e., not within 10% for HC and CO and 15% for nitrogen oxides, a third test shall be run. The results of the third test may be averaged with either of the first two tests if the resulting pair is consistent, i.e., within 10% for HC and CO and 15% for nitrogen oxides. If the third test does not result in a consistent pair, then the design shall not be acceptable unless the manufacturer can demonstrate to the state of Arizona's and to the United States Environmental Protection Agency's satisfaction that the first three tests were not repeatable due to nonconverter problems (e.g., test equipment, etc.) and that there is repeatability on subsequent tests.
8. If the with converter tests produce a consistent pair, the aftermarket converter shall then be removed and replaced with an exhaust pipe which adequately simulates the exhaust backpressure characteristics of the converter. No other maintenance or modification to the vehicles is permitted between with and without converter configurations. Two more cold start Federal Test Procedures tests shall be run on each vehicle with the converter removed. The results shall be averaged (if they meet the consistency requirements described in paragraph (A)(7) of this subsection) to obtain the without converter baseline values.
9. The converter efficiency shall be determined using the following formula:
 Efficiency = 100 (emissions without converter — emissions with converter)

emissions without converter

In order to be an acceptable converter, the converter efficiency determined above must be greater than or equal to the values shown in Table 7 for each of the two converters.

TABLE 7

	Minimum efficiency for (in percent)		
	HC	CO	NO(x)
Oxidation converter	70	70	(*)
Three-way converter	70	70	30
Three-way plus oxidation.	70	70	30

*No requirement

10. Converters produced after the qualification process has been successfully completed shall be identical to the qualified converters in all material respects. A listing of these characteristics and the information to be supplied to the state of Arizona and the United States Environmental Protection Agency shall include the following:
 - a. Catalyst supplier and address;
 - b. General type of converter (e.g., oxidation, reduction, three way, etc.);
 - e. Number of each type of catalyst used per can (each individual monolith unit or "biscuit" is considered to be a separate catalyst for purposes of determining the number of catalysts per can);

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- d. ~~Substrate (e.g., monolithic, pelleted) — configuration construction technique (e.g., extruded, laid-up, formed, Dravo disk, etc.), composition, supplier and address, and composition of active constituents in substrate (grams or troy ounces). For monolithic substrates, also specify the number of cells per square inch of frontal area and design tolerances and the nominal cell wall thickness (e.g., in mils). For pelleted substrates, also specify the pellet shape and dimensions, pellet bulk density, the type of pellet used (e.g., Rh or Pt/Pd), the geometrical distribution of pellets (if applicable), and (if this is controlled in production) the mean impregnation depth (e.g., in microns) of active materials including production tolerances;~~
 - e. ~~Composition of active constituents, and total active material loading (grams or troy oz) in washcoat;~~
 - f. ~~Composition of active constituents, loading of each active material (including design tolerances), and total active material loading (including design tolerances) in grams or troy oz;~~
 - g. ~~Container dimensions, including volume, materials used, technique of containment and restraint, method of constructing container, canner (if different from catalyst supplier), and insulation and shielding (converter and/or vehicle);~~
 - h. ~~Physical description of the converter, including dimensions (e.g., length, width, height, etc.) weight (lbs), volume (including design tolerances), active surface area (BET), and total active surface area (including design tolerances).~~
11. ~~The converter manufacturer shall enclose with each converter a statement that it has been designed and manufactured to meet the United States Environmental Protection Agency emission reduction requirements for the designated type of converter and shall warrant that when the vehicle is properly maintained, the converter will meet the emission reduction requirements specified in paragraph (A)(9) of this subsection for 25,000 miles and that the converter will not constitute a safety hazard.~~
12. ~~To ensure that new aftermarket converters have adequate external durability which will make them effective alternatives to OEM converters, the converter manufacturer shall design and warrant the external converter shell, including the end pipes, to last for five years or 50,000 miles (whichever comes first) from the date of installation.~~
13. ~~The converter manufacturer shall enclose with each converter the specific vehicle applications of that converter and a warranty application card to be returned to the converter manufacturer which shall include the vehicle owner's name and address, phone number, the make, model, year and mileage of the vehicle, the date of installation, the installing dealer's name and address, and the part numbers installed. A catalytic converter manufacturer may satisfy the vehicle applications information requirement of this paragraph with an aftermarket catalytic converter catalog if the manufacturer makes such catalog readily available to installers, retail customers, and the Department. All such cards or applications must be retained by the converter manufacturer for a period of five years.~~
14. ~~New converter manufacturers selling in Arizona shall report to the state of Arizona and the United States Environmental Protection Agency semiannually, the information contained on the warranty cards received and the number of each type of converter produced during the period. The warranty card information shall consist of either a listing of the names and addresses of dealerships purchasing new converters and the number of each type of converter sold or installed by each dealer, or copies of all completed warranty cards received by the manufacturer. In either case, such information shall be submitted within 30 days of the end of each period. The reporting periods shall end on June 30 and December 31 of each year.~~
- B. ~~All reconditioned OEM converters shall meet the following standards:~~
- 1. ~~Only used OEM converters can qualify under this subsection.~~
 - 2. ~~The converter shall be structurally sound. There shall be no leak paths in the can, and the can shall have acceptable backpressure characteristics, i.e., not be plugged. The substrate shall be sound, shall not be melted or attrited and shall not rattle.~~
 - 3. ~~A reconditioned converter shall be subjected to a performance test as follows: A converter originally at room temperature shall be subjected to an exhaust flow of known composition and temperature. The converter parameters of light-off and stabilized efficiency shall be measured on the same test. Each converter shall be tested and the exhaust gas constituents shall be read before and after the converter. Converter efficiency values for HC and CO conversion shall be computed at 120 seconds and 200 seconds. A light-off test and stabilized efficiency test shall be performed consecutively. The exhaust shall be set to the control parameters while bypassing the converter through a pipe set to a backpressure equal to the test system. At time = zero, the exhaust stream shall be switched into the converter system and a strip chart shall record exhaust gas constituents (before and after the converter) versus time. From this chart the conversion efficiency vs. time curve shall be established. Each converter shall meet all applicable requirements in Table 8.~~

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TABLE 8.—LIGHT-OFF AND STABILIZED CONVERSION
 EFFICIENCY VALUES FOR USED-OEM CONVERTERS
 (In percent)

Converter Type	Minimum efficiency at 120 seconds	Minimum efficiency at 200 seconds	HC	CO	HC	CO
Oxidation	50	50	75	75		
Three-Way	50	50	75	75		
Three-way plus oxidation	50	50	75	75		

The control parameters for this test are:-

- a. Engine type and displacement: V-8, 350 to 360 CID.-
- b. Engine speed: 1800 ± 20 RPM.-
- e. Converter inlet CO: 2% ± 0.05% CO.-
- d. Converter inlet temperature: 730 ± 30°F (set using engine load).-
- e. Air injection pump: 20 CID, (maximum).-
- f. Air injection drive ratio: 1.5:1 (maximum).-
- g. Converter mounting: The converter shall not be located closer than two feet from the location in the exhaust system where the exhaust from the two engine banks is joined together.-
- h. Converter pretest temperature: 90°F (Maximum normally, 100°F if room temperature makes it necessary due to outside ambient temperatures above 90°F).-

- 4. At the option of the converter remanufacturer, small size converters (less than 100 cubic inches of converter volume) may be tested using a smaller engine if the oxygen concentration at the converter inlet is five percent ± 0.5 percent, and the converter space velocity is not less than 25,000 hr⁻¹.
- 5. The converter remanufacturer shall enclose with each reconditioned converter a statement that it has been tested according to the test procedures contained in this subsection for reconditioned converters and meets all applicable requirements at the time of testing.
- 6. The converter remanufacturer shall enclose with each reconditioned converter the specific application of that converter.
- 7. The converter remanufacturer shall report to the state of Arizona and to the United States Environmental Protection Agency on a semiannual basis the names and complete addresses of the persons or companies in Arizona to whom it distributes along with the number of each type of converter sold to each. This information shall be submitted within 30 days of the end of each period. The reporting periods shall end on June 30 and December 31 of each year.
- 8. Used OEM catalytic converters that meet the performance test specified at Table 8 shall be considered used OEM reconditioned equivalent.

C. Labeling. The new aftermarket converter manufacturer or OEM remanufacturer shall label each new or reconditioned converter with a visible, permanent, nondestructible label or stamp, which will identify the manufacturer's code (to be issued by the United States Environmental Protection Agency when requested by letter), vehicle application code (to be supplied by the manufacturer to the state of Arizona and the United States Environmental Protection Agency), the month and year of manufacture or remanufacture, and information about whether the converter is new or reconditioned. The label information shall be in the following formats:-

1. New converters — N/XX/YYYY/ZZZZ

2. Reconditioned converters — U/XX/YYYY/ZZZZ

N — is for a new converter designation,

U — is for a reconditioned converter designation,

XX — is the manufacturer code issued by the United States Environmental Protection Agency and provided to the state of Arizona by the converter manufacturer or remanufacturer,

YYYY — is to be a numerical designation of the vehicle application,

ZZZZ — is the month and year of manufacture (i.e., "0187" for January, 1987).

D. Notification of state of Arizona and United States Environmental Protection Agency by catalyst manufacturers and remanufacturers. Any converter manufacturer or remanufacturer which markets converters pursuant to these standards must notify the Department and the United States Environmental Protection Agency of its intent to do so 30 days prior to the actual introduction of each product line. New converter manufacturers must include or have submitted a summary of test results including vehicles tested, method of mileage accumulation, name and location of testing facility, test results, intended vehicle application, and the converter information specified in R18-2-1031(A)(10). Reconditioned converter

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remanufacturers must include a description of the test facility and its location and the intended vehicle applications of the converter. The information shall be sent to Vehicle Emissions Inspection, 600 North 40th Street, Phoenix, Arizona 85008. Manufacturers and remanufacturers shall include any other information which they deem relevant to a determination that the subject converters meet the requirements set forth in this Section.

- E. Notification of dealers and distributors by converter manufacturers and remanufacturers. Any converter manufacturer or remanufacturer which markets under this Article shall have a system in place to notify and shall notify all of its known dealers and distributors of the proper installation requirements and restrictions which are applicable to the use of its converters. If the manufacturer or remanufacturer is notified by the United States Environmental Protection Agency or the Department that converters produced or sold by it do not meet the applicable acceptance criteria described in this Section, the manufacturer or remanufacturer shall promptly notify all of its known dealers and distributors of that fact and that the continued installation of the affected converters may be considered to be violations of the vehicle emission laws of the state of Arizona.
- F. It shall be unlawful to sell, distribute, or install in the state of Arizona new aftermarket or reconditioned OEM catalytic converters that do not meet the standards set forth in this Section.

TABLE 3
EMISSION STANDARDS-BIENNIAL TESTS

FINAL STANDARDS (Standards are in grams per mile)

(i) Light Duty Vehicles

<u>Model Years</u>	<u>Hydrocarbons</u>		<u>Carbon Monoxide</u>		<u>Oxides of Nitrogen</u>	
	<u>Composite</u>	<u>Phase 2</u>	<u>Composite</u>	<u>Phase 2</u>	<u>Composite</u>	<u>Phase 2</u>
<u>1981-1982</u>	<u>3.0</u>	<u>2.5</u>	<u>25.0</u>	<u>21.8</u>	<u>3.5</u>	<u>3.4</u>
<u>1983-1985</u>	<u>2.4</u>	<u>2.0</u>	<u>20.0</u>	<u>17.3</u>	<u>3.5</u>	<u>3.4</u>
<u>1986-1989</u>	<u>1.6</u>	<u>1.4</u>	<u>15.0</u>	<u>12.8</u>	<u>2.5</u>	<u>2.4</u>
<u>1990-1993</u>	<u>1.0</u>	<u>0.8</u>	<u>12.0</u>	<u>10.1</u>	<u>2.5</u>	<u>2.4</u>
<u>1994+</u>	<u>0.8</u>	<u>0.7</u>	<u>12.0</u>	<u>10.1</u>	<u>2.0</u>	<u>1.9</u>

(ii) Light Duty Trucks 1 (less than 6000 pounds GVWR)

<u>Model Years</u>	<u>Hydrocarbons</u>		<u>Carbon Monoxide</u>		<u>Oxides of Nitrogen</u>	
	<u>Composite</u>	<u>Phase 2</u>	<u>Composite</u>	<u>Phase 2</u>	<u>Composite</u>	<u>Phase 2</u>
<u>1981-1985</u>	<u>4.0</u>	<u>3.4</u>	<u>40.0</u>	<u>35.3</u>	<u>5.5</u>	<u>5.4</u>
<u>1986-1989</u>	<u>3.0</u>	<u>2.5</u>	<u>25.0</u>	<u>21.8</u>	<u>4.5</u>	<u>4.4</u>
<u>1990-1993</u>	<u>2.0</u>	<u>1.7</u>	<u>20.0</u>	<u>17.3</u>	<u>4.0</u>	<u>3.9</u>
<u>1994+</u>	<u>1.6</u>	<u>1.4</u>	<u>20.0</u>	<u>17.3</u>	<u>3.0</u>	<u>2.9</u>

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(iii) Light Duty Trucks 2 (greater than 6000 pounds GVWR)

<u>Model Years</u>	<u>Hydrocarbons</u>		<u>Carbon Monoxide</u>		<u>Oxides of Nitrogen</u>	
	<u>Composite</u>	<u>Phase 2</u>	<u>Composite</u>	<u>Phase 2</u>	<u>Composite</u>	<u>Phase 2</u>
<u>1981-1985</u>	<u>4.4</u>	<u>3.7</u>	<u>48.0</u>	<u>42.5</u>	<u>7.0</u>	<u>6.9</u>
<u>1986-1987</u>	<u>4.0</u>	<u>3.4</u>	<u>40.0</u>	<u>35.3</u>	<u>5.5</u>	<u>5.4</u>
<u>1988-1989</u>	<u>3.0</u>	<u>2.5</u>	<u>25.0</u>	<u>21.8</u>	<u>5.5</u>	<u>5.4</u>
<u>1990-1993</u>	<u>3.0</u>	<u>2.5</u>	<u>25.0</u>	<u>21.8</u>	<u>5.0</u>	<u>4.9</u>
<u>1994+</u>	<u>2.4</u>	<u>2.0</u>	<u>25.0</u>	<u>21.8</u>	<u>4.0</u>	<u>3.9</u>

TABLE 3
 EMISSION STANDARDS BIENNIAL TESTS

START-UP STANDARDS (To be used during calendar years 1995 and 1996 unless adjusted pursuant to R18-2-1006(J). Standards are in grams per mile.

(i) Light Duty Vehicles

<u>Model Years</u>	<u>Hydrocarbons</u>		<u>Carbon Monoxide</u>		<u>Oxides of Nitrogen</u>	
	<u>Composite</u>	<u>Phase 2</u>	<u>Composite</u>	<u>Phase 2</u>	<u>Composite</u>	<u>Phase 2</u>
<u>1991+</u>	<u>1.20</u>	<u>0.75</u>	<u>20.0</u>	<u>16.0</u>	<u>2.5</u>	<u>(Reserved)</u>
<u>1983-1990</u>	<u>2.00</u>	<u>1.25</u>	<u>30.0</u>	<u>24.0</u>	<u>3.0</u>	<u>(Reserved)</u>
<u>1981-1982</u>	<u>2.00</u>	<u>1.25</u>	<u>60.0</u>	<u>48.0</u>	<u>3.0</u>	<u>(Reserved)</u>

(ii) High Altitude Light Duty Vehicles

<u>Model Years</u>	<u>Hydrocarbons</u>		<u>Carbon Monoxide</u>		<u>Oxides of Nitrogen</u>	
	<u>Composite</u>	<u>Phase 2</u>	<u>Composite</u>	<u>Phase 2</u>	<u>Composite</u>	<u>Phase 2</u>
<u>1983-1984</u>	<u>2.00</u>	<u>1.25</u>	<u>60.0</u>	<u>48.0</u>	<u>3.0</u>	<u>(Reserved)</u>
<u>1982</u>	<u>2.00</u>	<u>1.25</u>	<u>75.0</u>	<u>60.0</u>	<u>3.0</u>	<u>(Reserved)</u>

(iii) Light Duty Trucks 1 (less than 6000 pounds GVWR)

<u>Model Years</u>	<u>Hydrocarbons</u>		<u>Carbon Monoxide</u>		<u>Oxides of Nitrogen</u>	
	<u>Composite</u>	<u>Phase 2</u>	<u>Composite</u>	<u>Phase 2</u>	<u>Composite</u>	<u>Phase 2</u>
<u>1991+</u>	<u>2.40</u>	<u>1.50</u>	<u>60.0</u>	<u>48.0</u>	<u>3.0</u>	<u>(Reserved)</u>
<u>1988-1990</u>	<u>3.20</u>	<u>2.00</u>	<u>80.0</u>	<u>64.0</u>	<u>3.5</u>	<u>(Reserved)</u>
<u>1984-1987</u>	<u>3.20</u>	<u>2.00</u>	<u>80.0</u>	<u>64.0</u>	<u>7.0</u>	<u>(Reserved)</u>
<u>1981-1983</u>	<u>7.50</u>	<u>5.00</u>	<u>100.0</u>	<u>80.0</u>	<u>7.0</u>	<u>(Reserved)</u>

(iv) High Altitude Light Duty Trucks 1 (less than 6000 pounds GVWR)

<u>Model Years</u>	<u>Hydrocarbons</u>		<u>Carbon Monoxide</u>		<u>Oxides of Nitrogen</u>	
	<u>Composite</u>	<u>Phase 2</u>	<u>Composite</u>	<u>Phase 2</u>	<u>Composite</u>	<u>Phase 2</u>
<u>1991+</u>	<u>3.00</u>	<u>2.00</u>	<u>70.0</u>	<u>56.0</u>	<u>3.0</u>	<u>(Reserved)</u>
<u>1988-1990</u>	<u>4.00</u>	<u>2.50</u>	<u>90.0</u>	<u>72.0</u>	<u>3.5</u>	<u>(Reserved)</u>
<u>1984-1987</u>	<u>4.00</u>	<u>2.50</u>	<u>90.0</u>	<u>72.0</u>	<u>7.0</u>	<u>(Reserved)</u>
<u>1982-1983</u>	<u>8.00</u>	<u>5.00</u>	<u>130.0</u>	<u>104.0</u>	<u>7.0</u>	<u>(Reserved)</u>

(v) Light Duty Trucks 2 (greater than 6000 pounds GVWR)

<u>Model Years</u>	<u>Hydrocarbons</u>		<u>Carbon Monoxide</u>		<u>Oxides of Nitrogen</u>	
	<u>Composite</u>	<u>Phase 2</u>	<u>Composite</u>	<u>Phase 2</u>	<u>Composite</u>	<u>Phase 2</u>
<u>1991+</u>	<u>2.40</u>	<u>1.50</u>	<u>60.0</u>	<u>48.0</u>	<u>4.5</u>	<u>(Reserved)</u>
<u>1988-1990</u>	<u>3.20</u>	<u>2.00</u>	<u>80.0</u>	<u>64.0</u>	<u>5.0</u>	<u>(Reserved)</u>
<u>1984-1987</u>	<u>3.20</u>	<u>2.00</u>	<u>80.0</u>	<u>64.0</u>	<u>7.0</u>	<u>(Reserved)</u>
<u>1981-1983</u>	<u>7.50</u>	<u>5.00</u>	<u>100.0</u>	<u>80.0</u>	<u>7.0</u>	<u>(Reserved)</u>

(vi) High Altitude Light Duty Trucks 2 (greater than 6000 pounds GVWR)

<u>Model Years</u>	<u>Hydrocarbons</u>		<u>Carbon Monoxide</u>		<u>Oxides of Nitrogen</u>	
	<u>Composite</u>	<u>Phase 2</u>	<u>Composite</u>	<u>Phase 2</u>	<u>Composite</u>	<u>Phase 2</u>
<u>1991+</u>	<u>3.00</u>	<u>2.00</u>	<u>70.0</u>	<u>56.0</u>	<u>4.5</u>	<u>(Reserved)</u>
<u>1988-1990</u>	<u>4.00</u>	<u>2.50</u>	<u>90.0</u>	<u>72.0</u>	<u>5.0</u>	<u>(Reserved)</u>

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1984-1987	4.00	2.50	90.0	72.0	7.0	(Reserved)
1982-1983	8.00	5.00	130.0	104.0	7.0	(Reserved)
FINAL STANDARDS (To be used beginning January 1, 1997. Standards are in grams per mile.)						
(i) Light Duty Vehicles						
Model Years	Hydrocarbons-		Carbon Monoxide		Oxides of Nitrogen	
	Composite	Phase 2	Composite	Phase 2	Composite	Phase 2
1996+	0.60	0.40	10.0	8.0	1.5	(Reserved)
1983-1995	0.80	0.50	15.0	12.0	2.0	(Reserved)
1981-1982	0.80	0.50	30.0	24.0	2.0	(Reserved)
(ii) High-Altitude Light Duty Vehicles						
Model Years	Hydrocarbons-		Carbon Monoxide		Oxides of Nitrogen	
	Composite	Phase 2	Composite	Phase 2	Composite	Phase 2
1983-1984	1.20	0.75	30.0	24.0	2.0	(Reserved)
1982	1.20	0.75	45.0	36.0	2.0	(Reserved)
(iii) Light Duty Trucks 1 (less than 6000 pounds GVWR)						
Model Years	Hydrocarbons-		Carbon Monoxide		Oxides of Nitrogen	
	Composite	Phase 2	Composite	Phase 2	Composite	Phase 2
1996+						
(≤3750 LVW)	0.60	0.40	10.0	8.0	1.5	(Reserved)
(>3750 LVW)	0.80	0.50	13.0	10.0	1.8	(Reserved)
1988-1995	1.60	1.00	40.0	32.0	2.5	(Reserved)
1984-1987	1.60	1.00	40.0	32.0	4.5	(Reserved)
1981-1983	3.40	2.00	70.0	56.0	4.5	(Reserved)
(iv) High-Altitude Light Duty Trucks 1 (less than 6000 pounds GVWR)						
Model Years	Hydrocarbons-		Carbon Monoxide		Oxides of Nitrogen	
	Composite	Phase 2	Composite	Phase 2	Composite	Phase 2
1988+	2.00	1.25	60.0	48.0	2.5	(Reserved)
1984-1987	2.00	1.25	60.0	48.0	4.5	(Reserved)
1982-1983	4.00	2.50	90.0	72.0	4.5	(Reserved)
(v) Light Duty Trucks 2 (greater than 6000 pounds GVWR)						
Model Years	Hydrocarbons-		Carbon Monoxide		Oxides of Nitrogen	
	Composite	Phase 2	Composite	Phase 2	Composite	Phase 2
1996+						
(≤5750 LVW)	0.80	0.50	13.0	10.0	1.8	(Reserved)
(>5750 LVW)	0.80	0.50	15.0	12.0	2.0	(Reserved)
1988-1995	1.60	1.00	40.0	32.0	3.5	(Reserved)
1984-1987	1.60	1.00	40.0	32.0	4.5	(Reserved)
1981-1983	3.40	2.00	70.0	56.0	4.5	(Reserved)
(vi) High-Altitude Light Duty Trucks 2 (greater than 6000 pounds GVWR)						
Model Years	Hydrocarbons-		Carbon Monoxide		Oxides of Nitrogen	
	Composite	Phase 2	Composite	Phase 2	Composite	Phase 2
1988+	2.00	1.25	60.0	48.0	3.5	(Reserved)
1984-1987	2.00	1.25	60.0	48.0	4.5	(Reserved)
1982-1983	4.00	2.50	90.0	72.0	4.5	(Reserved)

TABLE 4 - Transient Driving Cycle

<u>Time</u>	<u>Speed</u>								
<u>second</u>	<u>mph</u>								
<u>0</u>	<u>0</u>	<u>30</u>	<u>20.7</u>	<u>60</u>	<u>26</u>	<u>90</u>	<u>51.5</u>	<u>120</u>	<u>54.9</u>
<u>1</u>	<u>0</u>	<u>31</u>	<u>21.7</u>	<u>61</u>	<u>26</u>	<u>91</u>	<u>52.2</u>	<u>121</u>	<u>55.4</u>
<u>2</u>	<u>0</u>	<u>32</u>	<u>22.4</u>	<u>62</u>	<u>25.7</u>	<u>92</u>	<u>53.2</u>	<u>122</u>	<u>55.6</u>
<u>3</u>	<u>0</u>	<u>33</u>	<u>22.5</u>	<u>63</u>	<u>26.1</u>	<u>93</u>	<u>54.1</u>	<u>123</u>	<u>56</u>

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<u>4</u>	<u>0</u>	<u>34</u>	<u>22.1</u>	<u>64</u>	<u>26.5</u>	<u>94</u>	<u>54.6</u>	<u>124</u>	<u>56</u>
<u>5</u>	<u>3.3</u>	<u>35</u>	<u>21.5</u>	<u>65</u>	<u>27.3</u>	<u>95</u>	<u>54.9</u>	<u>125</u>	<u>55.8</u>
<u>6</u>	<u>6.6</u>	<u>36</u>	<u>20.9</u>	<u>66</u>	<u>30.5</u>	<u>96</u>	<u>55</u>	<u>126</u>	<u>55.2</u>
<u>7</u>	<u>9.9</u>	<u>37</u>	<u>20.4</u>	<u>67</u>	<u>33.5</u>	<u>97</u>	<u>54.9</u>	<u>127</u>	<u>54.5</u>
<u>8</u>	<u>13.2</u>	<u>38</u>	<u>19.8</u>	<u>68</u>	<u>36.2</u>	<u>98</u>	<u>54.6</u>	<u>128</u>	<u>53.6</u>
<u>9</u>	<u>16.5</u>	<u>39</u>	<u>17</u>	<u>69</u>	<u>37.3</u>	<u>99</u>	<u>54.6</u>	<u>129</u>	<u>52.5</u>
<u>10</u>	<u>19.8</u>	<u>40</u>	<u>17.1</u>	<u>70</u>	<u>39.3</u>	<u>100</u>	<u>54.8</u>	<u>130</u>	<u>51.5</u>
<u>11</u>	<u>22.2</u>	<u>41</u>	<u>15.8</u>	<u>71</u>	<u>40.5</u>	<u>101</u>	<u>55.1</u>	<u>131</u>	<u>50.8</u>
<u>12</u>	<u>24.3</u>	<u>42</u>	<u>15.8</u>	<u>72</u>	<u>42.1</u>	<u>102</u>	<u>55.5</u>	<u>132</u>	<u>48</u>
<u>13</u>	<u>25.8</u>	<u>43</u>	<u>17.7</u>	<u>73</u>	<u>43.5</u>	<u>103</u>	<u>55.7</u>	<u>133</u>	<u>44.5</u>
<u>14</u>	<u>26.4</u>	<u>44</u>	<u>19.8</u>	<u>74</u>	<u>45.1</u>	<u>104</u>	<u>56.1</u>	<u>134</u>	<u>41</u>
<u>15</u>	<u>25.7</u>	<u>45</u>	<u>21.6</u>	<u>75</u>	<u>46</u>	<u>105</u>	<u>56.3</u>	<u>135</u>	<u>37.5</u>
<u>16</u>	<u>25.1</u>	<u>46</u>	<u>22.2</u>	<u>76</u>	<u>46.8</u>	<u>106</u>	<u>56.6</u>	<u>136</u>	<u>34</u>
<u>17</u>	<u>24.7</u>	<u>47</u>	<u>24.5</u>	<u>77</u>	<u>47.5</u>	<u>107</u>	<u>56.7</u>	<u>137</u>	<u>30.5</u>
<u>18</u>	<u>25.2</u>	<u>48</u>	<u>24.7</u>	<u>78</u>	<u>47.5</u>	<u>108</u>	<u>56.7</u>	<u>138</u>	<u>27</u>
<u>19</u>	<u>25.4</u>	<u>49</u>	<u>24.8</u>	<u>79</u>	<u>47.3</u>	<u>109</u>	<u>56.3</u>	<u>139</u>	<u>23.5</u>
<u>20</u>	<u>27.2</u>	<u>50</u>	<u>24.7</u>	<u>80</u>	<u>47.2</u>	<u>110</u>	<u>56</u>	<u>140</u>	<u>20</u>
<u>21</u>	<u>26.5</u>	<u>51</u>	<u>24.6</u>	<u>81</u>	<u>47.2</u>	<u>111</u>	<u>55</u>	<u>141</u>	<u>16.5</u>
<u>22</u>	<u>24</u>	<u>52</u>	<u>24.6</u>	<u>82</u>	<u>47.4</u>	<u>112</u>	<u>53.4</u>	<u>142</u>	<u>13</u>
<u>23</u>	<u>22.7</u>	<u>53</u>	<u>25.1</u>	<u>83</u>	<u>47.9</u>	<u>113</u>	<u>51.6</u>	<u>143</u>	<u>9.5</u>
<u>24</u>	<u>19.4</u>	<u>54</u>	<u>25.6</u>	<u>84</u>	<u>48.5</u>	<u>114</u>	<u>51.8</u>	<u>144</u>	<u>6</u>
<u>25</u>	<u>17.7</u>	<u>55</u>	<u>25.7</u>	<u>85</u>	<u>49.1</u>	<u>115</u>	<u>52.1</u>	<u>145</u>	<u>2.5</u>
<u>26</u>	<u>17.2</u>	<u>56</u>	<u>25.4</u>	<u>86</u>	<u>49.5</u>	<u>116</u>	<u>52.5</u>	<u>146</u>	<u>0</u>
<u>27</u>	<u>18.1</u>	<u>57</u>	<u>24.9</u>	<u>87</u>	<u>50</u>	<u>117</u>	<u>53</u>		
<u>28</u>	<u>18.6</u>	<u>58</u>	<u>25</u>	<u>88</u>	<u>50.6</u>	<u>118</u>	<u>53.5</u>		
<u>29</u>	<u>20</u>	<u>59</u>	<u>25.4</u>	<u>89</u>	<u>51</u>	<u>119</u>	<u>54</u>		

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TABLE 4 – Transient Driving Cycle

Time second	Speed mph								
0	0	48	25.7	96	0	144	24.6	192	54.6
1	0	49	26.1	97	0	145	24.6	193	54.8
2	0	50	26.7	98	3.3	146	25.1	194	55.1
3	0	51	27.5	99	6.6	147	25.6	195	55.5
4	0	52	28.6	100	9.9	148	25.7	196	55.7
5	3	53	29.3	101	13.2	149	25.4	197	56.1
6	5.9	54	29.8	102	16.5	150	24.9	198	56.3
7	8.6	55	30.1	103	19.8	151	25	199	56.6
8	11.5	56	30.4	104	22.2	152	25.4	200	56.7
9	14.3	57	30.7	105	24.3	153	26	201	56.7
10	16.9	58	30.7	106	25.8	154	26	202	56.3
11	17.3	59	30.5	107	26.4	155	25.7	203	56
12	18.1	60	30.4	108	25.7	156	26.1	204	55
13	20.7	61	30.3	109	25.1	157	26.7	205	53.4
14	21.7	62	30.4	110	24.7	158	27.3	206	51.6
15	22.4	63	30.8	111	25.2	159	30.5	207	51.8
16	22.5	64	30.4	112	25.4	160	33.5	208	52.1
17	22.1	65	29.9	113	27.2	161	36.2	209	52.5
18	21.5	66	29.5	114	26.5	162	37.3	210	53
19	20.9	67	29.8	115	24	163	39.3	211	53.5
20	20.4	68	30.3	116	22.7	164	40.5	212	54
21	19.8	69	30.7	117	19.4	165	42.1	213	54.9
22	17	70	30.9	118	17.7	166	43.5	214	55.4
23	14.9	71	31	119	17.2	167	45.1	215	55.6
24	14.9	72	30.9	120	18.1	168	46	216	56
25	15.2	73	30.4	121	18.6	169	46.8	217	56
26	15.5	74	29.8	122	20	170	47.5	218	55.8
27	16	75	29.9	123	20.7	171	47.5	219	55.2
28	17.1	76	30.2	124	21.7	172	47.3	220	54.5
29	19.1	77	30.7	125	22.4	173	47.2	221	53.6
30	21.1	78	31.2	126	22.5	174	47.2	222	52.5
31	22.7	79	31.8	127	22.1	175	47.4	223	51.5
32	22.9	80	32.2	128	21.5	176	47.9	224	50.5
33	22.7	81	32.4	129	20.9	177	48.5	225	48
34	22.6	82	32.2	130	20.4	178	49.1	226	44.5
35	21.3	83	31.7	131	19.8	179	49.5	227	41
36	19	84	28.6	132	17	180	50	228	37.5
37	17.1	85	25.1	133	17.1	181	50.6	229	34
38	15.8	86	21.6	134	15.8	182	51	230	30.5
39	15.8	87	18.1	135	15.8	183	51	231	27
40	17.7	88	14.6	136	17.7	184	52.2	232	23.5
41	19.8	89	11.1	137	19.8	185	53.2	233	20
42	21.6	90	7.6	138	21.6	186	54.1	234	16.5
43	23.2	91	4.1	139	22.2	187	54.6	235	13
44	24.2	92	0.6	140	24.5	188	54.9	236	9.5
45	24.6	93	0	141	24.7	189	55	237	6
46	24.9	94	0	142	24.8	190	54.9	238	2.5
47	25	95	0	143	24.7	191	54.6	239	0

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TABLE 6
EMISSION STANDARDS-REMOTE SENSING IDENTIFICATIONS

<u>Vehicle</u> <u>Engine</u> <u>Type</u>	<u>Vehicle</u> <u>Model</u> <u>Year</u>	<u>Gross</u> <u>Vehicle</u> <u>Weight</u> <u>Rating</u> <u>(Pounds)</u>	<u>Number of</u> <u>Cylinders</u>	<u>Remote</u> <u>Sensing</u> <u>Standard</u> <u>CO</u> <u>%</u>	<u>Remote</u> <u>Sensing</u> <u>Standard</u> <u>HC</u> <u>ppm</u>
N/A	1991-1999	8500 or less	N/A	3.5	450
N/A	1983-1990	8500 or less	N/A	3.9	500
N/A	1981-1982	8500 or less	N/A	5.2	500
N/A	1991-1999	6000 or less	N/A	5.2	525
N/A	1988-1990	6000 or less	N/A	6	575
N/A	1984-1987	6000 or less	N/A	6	575
N/A	1981-1983	6000 or less	N/A	6.8	875
N/A	1991-1999	6000-8500	N/A	5.2	525
N/A	1988-1990	6000-8500	N/A	6	575
N/A	1984-1987	6000-8500	N/A	6	575
N/A	1981-1983	6000-8500	N/A	6.8	875
4-Stroke	1980+Newer	8500 or less	All	3.6	500
4-Stroke	1979+Newer	Greater than 8500	All	5.5	575
4-Stroke	1979	8500 or less	4 cylinders or less	4.1	500
4-Stroke	1979	8500 or less	More than 4 cylinders	3.9	500
4-Stroke	1975-1978	6000 or less	4 cylinders or less	4.1	550
4-Stroke	1975-1978	6000 or less	More than 4 cylinders	3.9	550
4-Stroke	1975-1978	Greater than 6000	All	5.5	600
4-Stroke	1972-1974	All	4 cylinders or less	6.7	650
4-Stroke	1972-1974	All	More than 4 cylinders	6.2	650
4-Stroke	1967-1971	All	4 cylinders or less	6.7	725
4-Stroke	1967-1971	All	More than 4 cylinders	6.2	675

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<u>4-Stroke</u>	<u>1981 and Newer, Reconstructed</u>	<u>All</u>	<u>All</u>	<u>7.8</u>	<u>875</u>
<u>4-Stroke</u>	<u>1980 and Older, Reconstructed</u>	<u>All</u>	<u>All</u>	<u>8.1</u>	<u>1225</u>

TABLE 6:
EMISSION STANDARDS REMOTE SENSING IDENTIFICATIONS
 (Unless adjusted pursuant to R18-2-1015(F))

Vehicle-Engine Type	Vehicle-Model Year	Gross Vehicle Weight-Rating (Pounds)	Number of Cylinders	Remote Sensing Standard -CO %	Remote Sensing Standard HC ppm
4-stroke	1981 and newer	8500 or less	All	3.30	2000
4-stroke	1980	8500 or less	All	3.30	2000
4-stroke	1979	8500 or less	4 cylinders or less	3.80	2000
4-stroke	1979	8500 or less	More than 4 cylinders	3.60	2000
4-stroke	1981 and newer	Greater than 8500	All	5.10	2000
4-stroke	1979 and 1980	Greater than 8500	All	5.10	2000
4-stroke	1975-1978	6000 or less	4 cylinders or less	3.80	2000
4-stroke	1975-1978	6000 or less	More than 4 cylinders	3.60	2000
4-stroke	1975-1978	Greater than 6000	All	5.10	2000
4-stroke	1972-1974	All	4 cylinders or less	6.30	2000
4-stroke	1972-1974	All	More than 4 cylinders	5.90	2000
4-stroke	1967-1971	All	4 cylinders, or less	6.30	2000
4-stroke	1967-1971	All	More than 4 cylinders	5.90	2000
4-stroke	Reconstructed 1981 and newer	All	All	7.40	2000
4-stroke	Reconstructed 1980 and older	All	All	7.70	2000

NOTICE OF PROPOSED RULEMAKING

TITLE 20. COMMERCE, BANKING, AND INSURANCE

CHAPTER 6. DEPARTMENT OF INSURANCE

PREAMBLE

1. **Section Affected** **Rulemaking Action**
R20-6-204 Amend
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. §§ 20-143, 20-413.
Implementing statutes: A.R.S. § 20-413.
3. **List of all previous notices appearing in the Register addressing the proposed rule:**
Notice of Rulemaking Docket Opening: 5 A.A.R. 2447, July 30, 1999.
4. **The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
Name: Vista Thompson Brown
Address: Arizona Department of Insurance
2910 N. 44th Street, Suite 210
Phoenix, Arizona 85018
Telephone: (602) 912-8451
Fax: (602) 912-8452
5. **An explanation of the rule, including the agency's reasons for initiating the rule:**
The Department has proposed the rule revisions to:
 - Add definitions of terms used in the rule to improve clarity;
 - Clarify the filing requirements for surplus lines insurance by specifying who is responsible for filing various documents and specifying what is a "material change" in operations;
 - Revise the filing requirements to require surplus lines brokers and insurers to certify only the information about which they have personal knowledge to address concerns raised by public comment;
 - Eliminate duplicative and unnecessary filings; and
 - Make non-substantive changes to conform to current format and style requirements for rules, such as eliminating the subsections of "purpose" and "authority."
6. **A reference to any study that the agency proposes to rely on in its evaluation of or justification for the proposed rule and where the public may obtain or review the study, all data underlying each study, any analysis of the study and other supporting material:**
None.
7. **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.
8. **The preliminary summary of the economic, small business, and consumer impact:**
Clarification of the process has intangible benefits for both the Department and the regulated community by eliminating confusion about filing requirements. Elimination of unnecessary filing requirements may have small cost savings for surplus lines brokers
9. **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: Vista Thompson Brown
Address: Arizona Department of Insurance

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2910 N. 44th Street, Suite 210
Phoenix, Arizona 85018

Telephone: (602) 912-8451

Fax: (602) 912-8452

10. 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 Department invites and will accept written comments during regular business hours at the address listed in question #9 until the close of the record at 5 p.m. on Tuesday, September 14, 1999, concerning the proposed amendments to the surplus lines rule.

The Department will hold an oral proceeding on Monday, September 13, 1999, at 2 p.m. at the Department of Insurance, 2910 N. 44th Street, Phoenix, Arizona, in the 2nd Floor Conference Room.

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

None.

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

None.

13. The full text of the rule follows:

TITLE 20. COMMERCE, BANKING, AND INSURANCE

CHAPTER 6. DEPARTMENT OF INSURANCE

ARTICLE 2. TRANSACTION OF INSURANCE

Sections

R20-6-204. Surplus Lines Brokers' Filing Requirements; List of Unauthorized Insurers

ARTICLE 2. TRANSACTION OF INSURANCE

R20-6-204. Surplus Lines Brokers' Filing Requirements; List of Unauthorized Insurers

- A.** Authority. This rule is promulgated pursuant to A.R.S. § 20-143 and in accordance with A.R.S. § 20-413.
- B.** Purpose. The purpose of this rule is to set forth filing requirements for surplus lines brokers, create and maintain a list of those foreign and alien unauthorized insurers providing surplus lines coverages in Arizona and require disclosure statements.
- C.** Scope. This rule applies to all unauthorized insurers writing surplus lines in Arizona and to all surplus lines brokers.
- A.** Definitions.
1. "Listed insurer" means an unauthorized insurer who is on the list created by the Director under subsection (C)(1) and A.R.S. § 20-413.
 2. "Surplus lines broker" means a person licensed under A.R.S. § 20-411.
 3. "Surplus lines insurance" means the type of insurance described in A.R.S. § 20-407.
 4. "Unauthorized insurer" means an insurer that does not have a certificate of authority to transact insurance in Arizona.
- B.** Filing requirements. Unauthorized insurers writing surplus lines insurance in Arizona and surplus line brokers shall comply with the filing requirements of this Section.
- C.** ~~D.~~ The List of unauthorized insurers.
1. The Director shall create and maintain a list of unauthorized insurers that may write surplus lines insurance in this state ~~under in accordance with~~ A.R.S. § 20-413. The list shall include the names of unauthorized insurers for which a ~~any~~ surplus lines broker has made the filings required by this Section ~~subsections (D)(2) or (3).~~
 2. A listed insurer shall remain on the list until:
 - a. The Director removes the insurer from the list under A.R.S. § 20-413 or subsections (H) or (I) below, or
 - b. The insurer requests the Director to remove its name from the list, and the Director consents to the request.
- D.** ~~Placing surplus lines insurance. A licensed surplus lines broker shall restrict all surplus lines business placed by the surplus lines broker to listed insurers. may place insurance with any insurer appearing on the current list. The list is available from the Department of Insurance and a copy may be obtained upon request and payment of the required photocopy charge. An insurer's removal from the list shall not affect the validity of any contract existing at the time of removal.~~
- E.** ~~2.~~ Requirements for Initial Listing of Foreign Unauthorized Insurers. In the case of foreign unauthorized insurers, A the surplus lines broker shall file with the Director the following documents for a foreign unauthorized insurer:

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- ~~1.a.~~ A current Certificate of Deposit, Capital, and Surplus for Foreign Insurers ~~form~~ from the public officials or other persons who have supervision over the insurer in any other state;
 - ~~2.b.~~ A certification from the surplus lines broker of the insurer's compliance with the financial requirements of A.R.S. § 20-413;
 - ~~3.e.~~ The insurer's most recent report of financial examination ~~of the insurer~~, certified by the insurance supervisory official of its state of domicile; and
 - ~~4.d.~~ A certified copy of a full size National Association of Insurance Commissioners (N.A.I.C.) convention blank annual statement (Form 2) for the insurer as of December 31 of the preceding year.
- F.3.** Requirements for Initial Listing of Alien Unauthorized Insurers. A surplus lines broker shall file a certification of the insurer's compliance with the financial requirements of A.R.S. § 20-413. For all alien insurers other than title insurers, the surplus lines broker may rely on the information contained in the most recent N.A.I.C. Financial Review of Alien Insurers as prima facie evidence of the financial responsibility of an alien insurer and shall submit to the Director a certification from the broker of the insurer's compliance with the financial requirements of A.R.S. § 20-413.—
- G.** Filing Requirements to Maintain Listing. To ensure that a foreign or alien unauthorized insurer remains on the Director's list, a surplus lines broker shall file, before June 1 of each year:
1. A copy of a full size National Association of Insurance Commissioners (N.A.I.C.) convention blank annual statement (Form 2) for the insurer, as of December 31 of the preceding year; and
 2. An affidavit, on a form approved by the Director, that meets the requirements of this subsection.
 - a. The surplus lines broker and a duly authorized officer of the unauthorized insurer shall sign the affidavit.
 - b. The insurer's officer shall state whether there have been any changes in the insurer's name, address, state of domicile, statutory agent, and any material changes in its operations since the insurer's initial qualification for listing or the last annual filing under this subsection. If there have been material changes in operations, the officer shall describe the changes. In this subsection, material changes include a change in any 1 or a combination of the following:
 - i. A director, officer, or controlling person;
 - ii. The insurer's holding company or affiliates;
 - iii. The insurer's charter documents, including its articles of incorporation, articles of agreement, or by-laws governing its conduct of business;
 - iv. The insurer's marketing or administration plans, operations, or agreements with 3rd parties;
 - v. Any other matter material to the insurer meeting its obligations to its policyholders; and
 - vi. Any other matter that relates to any of the grounds for removal from the list as set forth in A.R.S. § 20-413.
 - c. The insurer's officer shall state whether the insurer is in good standing in all jurisdictions where it conducts insurance business and whether the insurer has been, since the date of initial listing or the last annual filing under this subsection, or currently is, the subject of any actions or orders by any regulatory official in any jurisdiction. If the insurer has been or is the subject of disciplinary actions or orders, the insurer's officer shall describe each matter in the affidavit and shall attach a copy of any applicable official document. In this subsection, regulatory action or order includes any 1 or a combination of the following:
 - i. Denial, suspension, or revocation of a license, permit, or certificate of authority;
 - ii. A corrective action or operation plan, consent order, memorandum of understanding, or cease and desist order;
 - iii. Action against the insurer's bond or securities held in trust by a regulatory official; and
 - iv. Supervision, conservatorship, receivership, or any other form of possession or control by a regulatory official in any jurisdiction.
 - d. The insurer's officer shall state whether the report of examination, if any, previously filed with the Director under subsection (E)(3) or with a previous annual filing, remains the most current, filed report. If a more recent report of examination exists, the surplus lines broker shall file a copy of the report with the affidavit.
- H.** Supplemental information; removal. A surplus lines broker and an unauthorized insurer shall provide any additional information the Director requests to determine whether the insurer meets the requirements of A.R.S. § 20-413, or to clarify documents filed under this Section. The Director may remove an insurer from the list if the surplus lines broker or insurer does not submit the requested information within 15 days after receipt of a written request for information.
- I.** Removal for failure to make annual filing. The Director shall remove an unauthorized insurer from the list if a surplus lines broker fails to timely file the documents required by subsection (G). The Director shall not restore the insurer to the list until a surplus lines broker has filed all applicable documents required under subsections (E) and (F) and the insurer has requalified under A.R.S. § 20-413.
4. The Department may remove any unauthorized insurer which appears on the list under the authority of A.R.S. § 20-413(H). This paragraph does not affect the validity of any existing contract if an insurer is removed from the list.
- J.E.** Organizations of surplus lines brokers; unauthorized insurer.
1. A surplus lines broker may file records or reports that are subject to examination with any voluntary organization of surplus line brokers. The Director may examine the records or reports filed with an organization of surplus lines bro-

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kers in order to ascertain compliance with A.R.S. Title 20, Chapter 2, Article 5. An examination performed under ~~pursuant to~~ this authority shall not preclude examination of records of a surplus line broker.

2. Nothing in this rule requires that a surplus lines broker become a member of any surplus line organization in order to file or to preserve or maintain any affidavit or statement.