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

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

A. Agency's Reasons for Initiating the Rule

The purpose of this rulemaking is to conform the Department's rules governing administrative appeals to A.R.S. §§ 41-1092 through 41-1092.12. Those statutory provisions, which control the administrative appeal of agency actions, supersede the Department's current rules at R18-1-201 through R18-1-219.

This notice repeals R18-1-201 and R18-1-203 through R18-1-219 and adds new sections R18-1-201 and R18-1-203 through R18-1-207 to clarify the responsibilities of the Department under A.R.S. §§ 41-1092 through 41-1092.12. (R18-1-202 is addressed in a separate supplemental notice that was filed with the Secretary of State on May 28, 1999.) Although the Office of Administrative Hearings ("OAH") currently is responsible for conducting most appeal hearings on actions of the Department pursuant to A.R.S. §§ 41-1092 through 41-1092.12, and has recently made rules governing its conduct of those hearings (filed with the Secretary of State and effective on February 3, 1999), the Department remains responsible for processing notices of administrative appeal or requests for hearing sent to the Department, holding informal settlement conferences on administrative appeals, reviewing decisions arrived at through formal adjudication of administrative appeals before the OAH, or entertaining motions for rehearing on decisions arrived at through formal adjudication. New sections R18-1-201 and R18-1-203 through R18-1-207 govern when and how the Department shall perform these tasks.

B. Section-by-Section Explanation of The Rules

R18-1-201. Applicability

This Section provides sections R18-1-202 through R18-1-205 and R18-1-207 apply to notices of administrative appeal filed with the Department and requesting a hearing before the OAH. Sections R18-1-202 through R18-1-205 and R18-1-207 govern when and how the Department may process a notice of administrative appeal through the OAH, hold an informal settlement conference on the appeal, and review and rehear decisions arrived at through formal adjudication of the appeal before the OAH. These sections do not govern the operations of the OAH or other agencies.

R18-1-203. Contested Case Procedures

A.R.S. §§ 41-1092.03 and 41-1092.06 impose 4 procedural requirements on the Department. First, the Department must notify a party of its right to administratively appeal an appealable agency action. Second, the Department must schedule a hearing through the OAH upon receiving a notice of appeal, if the agency action that is the subject of the notice actually determines the party's legal rights, duties, or privileges or is appealable in accordance with A.R.S. § 41-1092.12. Third, the Department must notify a party that it may request an informal settlement conference on the appealable agency action if the party is administratively appealing the agency action. Fourth, the Department must convene an informal settlement conference on the appealable agency action if requested to do so by the administrative appellant.

Under the current version of A.R.S. §§ 41-1092.03 and 41-1092.06, the above 4 procedural requirements apply only to appealable agency actions and not to contested cases. A contested case is an agency action that is expressly appealable under a statute or a rule. See A.R.S. § 41-1001(4). Therefore, the above 4 procedural requirements do not apply to agency actions that are expressly appealable under a statute or a rule. If the Department does provide notice of the right to appeal a contested case, schedule a hearing on a contested case, or provide a settlement conference on a contested case, the Department does so as a matter of policy or pursuant to the statute or rule that expressly makes the agency action appealable, rather than pursuant to A.R.S. §§ 41-1092.03 and 41-1092.06 which do not apply to contested cases.

This Section goes beyond the requirements of the current version of A.R.S. §§ 41-1092.03 and 41-1092.06 by making the above 4 procedures available in all contested cases that are appealable through the OAH. The Department has decided to confer these procedural rights in such contested cases for 3 reasons. First, providing these rights also in contested cases avoids any confusion that may result from the operational distinction between appealable agency

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actions and contested cases. Second, the Department believes the Legislature may intend these rights to apply also to contested cases. See Laws 1998, Ch. 57, Sec. 60 (amending A.R.S. § 41-1092.02(D) to remove procedural distinctions between appealable agency actions and contested cases). Third, providing these rights also in contested cases is good public policy because it provides an opportunity for reconsideration and a settlement which avoids the necessity of a formal hearing.

This Section also covers those instances when filing time limits on notices of contested cases are not specified in A.R.S. Title 49. For example, A.R.S. § 49-142(B) provides that an order to abate an environmental nuisance is appealable “pursuant to Title 41, Chapter 6, Article 10,” but fails to specify the time limit in which the party must file the notice of appeal. Moreover, the 30-day filing time limit of A.R.S. § 41-1092.03(B) does not apply to such a contested case appeal because that filing time limit applies only to appealable agency actions. This Section corrects this deficiency by imposing the same reasonable 30-day filing time limit also on notices of appeal of contested cases unless A.R.S. Title 49 provides the filing time limit. The Department believes that such a result is not inconsistent with the procedural due process objectives of A.R.S. Title 41, Chapter 6, Article 10, because the Legislature recently has been requiring notices of contested case appeal to be made pursuant to section 41-1092.03 which establishes the 30-day filing time limit for appealable agency actions. E.g., Laws 1997, Ch. 287, Sec. 47 (amending A.R.S. § 49-298(B) which governs administrative appeals of WQARF program actions).

R18-1-204. Record of Administrative Appeal

The substantive requirements of this Section are relocated from the currently effective rules at R18-1-219 and amended to specify the Department shall maintain its record of an administrative appeal longer than 3 years if an appeal of the matter is still pending.

R18-1-205. Notice of Intent to Rely on License Application Components as Submitted

Subsection (A) of this Section requires the Department to explain the basis of its licensing notices of application deficiencies or licensing requests for additional information. Such an explanation will provide the license applicant with the information necessary to determine whether to avail itself of the option set forth in subsection (B).

Subsection (B) of this Section allows a license applicant to require the Department to reconsider a licensing notice of application deficiencies or a licensing request for additional information, by submitting to the Department a notice of the applicant’s intent to rely on the application components as originally submitted. The availability of this option for the license applicant means a licensing notice of application deficiencies or a licensing request for additional information does not determine the legal rights, duties, or privileges of the applicant and thus is not administratively appealable unless the appeal is properly filed pursuant to A.R.S. § 41-1092.12.

Under subsection (B), the license applicant must register its intent to rely on the application components as submitted within the time specified in the Department’s licensing notice of deficiencies or request for additional information. If the Department’s notice or request does not specify the time within which the applicant must respond, then the applicant must submit the notice of intent to rely on the components as submitted within 60 days after the mailing date of the Department’s notice or request.

Subsection (C) of this Section specifies the information the applicant must submit if notifying the Department that it intends to rely on the application components as submitted rather than respond to the Department’s request for the additional components. The information specified in the rule is the minimum necessary for the Department to understand what requested or identified components the license applicant is electing not to provide and for the Department to determine whether and how it should rescind or modify its request or proceed to a licensing decision.

Subsection (D) of this Section allows the license applicant to submit whatever additional components or other information the applicant believes necessary to support the granting of the license, even though the applicant is electing not to provide additional components requested by the Department. The additional components or other information would have to be submitted at the same time the applicant submits the notice of intent to rely on the application components as submitted.

Subsection (E) of this Section presents the range of actions the Department may take in responding to a notice of intent to rely on the license application components as submitted. This list simply clarifies the choices already permitted by law. The Department may (1) rescind its request for additional components, (2) modify its request for additional components, (3) grant the license unconditionally, (4) grant the license with conditions, or (5) deny the license. Options (4) and (5) would determine the legal rights, duties, or privileges of the applicant, and thus would be administratively appealable.

Subsection (F) of this Section specifies this Section does not apply to the extent that Arizona Revised Statutes require different treatment of licensing notices of application deficiencies or licensing requests for additional infor-

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mation. For example, A.R.S. § 49-202 specifies that the person applying for section 401 certification may treat a 2nd Department request for supplemental information as a denial of the application; A.R.S. § 49-202(G) specifies that such a denial is administratively appealable. Accordingly, R18-1-205 may not apply to A.R.S. § 49-202 licensing requests for additional information that are made after the 1st request. However, R18-1-205 continues to apply to all notices that an application for 401 certification is administratively incomplete under A.R.S. § 41-1074, because administrative incompleteness notices are not qualified in A.R.S. § 49-202.

R18-1-206. Adjudicative Proceedings Before the Department

This Section provides the Department shall rely on the OAH's recently made hearing rules for guidance when conducting hearings that are required or authorized to be conducted by the Department rather than the OAH or another body of formal administrative adjudication.

R18-1-207. Requests for Rehearing or Review

This Section provides a mechanism for requesting a rehearing or review of a formal decision of the Department arising out of formal administrative adjudication before the OAH or the Department. This Section includes the standards by which the Director shall determine whether to grant the request for rehearing or review.

7. 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. The Department does not rely on a study in this rulemaking, except for the study of economic, small business, and consumer impacts prepared by the Department and included in the answer to Question 9, below.

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

Not applicable. This rule will not diminish a previous grant of authority of a political subdivision of this state.

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

This rulemaking confers additional due process rights on contested case appellants. The overall economic impact of this rulemaking is positive.

Persons who wish to communicate with the Department about the economic impacts of this rulemaking may do so by contacting Gerry DaRosa (602) 207-2212.

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

This rulemaking directly impacts the potential administrative appellant, the Department, the Office of Administrative Hearings (OAH), and the Attorney General's Office (AGO). The potential administrative appellant may be a political subdivision, a business, or a natural person.

b. Cost-benefit analysis:

The benefits of this rulemaking outweigh the costs. The estimated costs are based on the USAS billing system.

(1) The probable costs and benefits to the Department -- The cost of this rulemaking is the cost of amending form notices of appealable agency action to indicate that the procedural rights that apply to appealable agency actions shall, under the rule, also apply to contested cases. The estimated annual costs of revising and updating these notices is as follows:

Costs associated with revising and updating form notices of appeal:

Administrative counsel	2 hour	70/hr	\$140
Policy advisor (attorney)	8 hours	40/hr	\$320
		TOTAL	\$460/YR

The benefits to the Department consist of savings associated with making settlement conferences available also in contested cases, which will reduce the number of cases that require agency head review of OAH recommended decisions.

Typically, the Department's involvement in processing a notice of administrative appeal consists of the following tasks: (1) the Department's hearing administrator and clerk review the request for a hearing and direct the request to the applicable program; (2) a Department staff attorney reviews the substance of the request and coordinates the case with the AGO; (3) the applicable program personnel appear as witnesses at the hearing; (4) the Department policy

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advisor (attorney) reviews the case and briefs the Administrative Counsel and the Director on the issues; (5) the Director reviews the case and decides whether to accept, modify, or reject the recommended decision of the OAH administrative law judge; (6) the Department's hearing administrator and clerk distribute copies of the final administrative decision on all parties and maintain a record of the request for a minimum of 3 years.

In the 1997 calendar year, the Department received 109 requests for a hearing. Of those 109 requests, 22 were actually processed for hearing before the OAH. The remaining 87 requests were either resolved through informal settlement conference or were dismissed for failure to state a cognizable claim. The Department conservatively estimates that an additional 3 requests could have been settled had the informal settlement conference provision of A.R.S. § 41-1092.06 also applied to contested cases, which would have resulted in a final administrative decision not requiring agency head review. Accordingly, the Department estimates the following minimum annual savings will result from the rule making, based on the Department not having to perform tasks identified above:

Savings associated with obtaining 3 additional settlements:

Director	1 hour	100/hr	\$100
Administrative counsel	2 hours	70/hr	\$140
Policy advisor (attorney)	16 hours	40/hr	\$640
Hearing administrator	1 hour	35/hr	\$35
Clerk	.5 hours	20/hr	\$10
TOTAL			\$925 X 3 = \$2,775/YR

(Assumes the time required by program staff to act as witnesses at a hearing is the same as the time necessary to participate in an informal settlement conference.)

(2) The probable costs and benefits to the OAH -- The rulemaking does not impose costs on the OAH.

The rulemaking would benefit the OAH in that it would relieve the OAH of having to hear an estimated 3 additional appeals. The savings are estimated as follows:

Savings associated with obtaining 3 additional settlements:

Administrative law judge	6 hours	60/hr	\$360
OAH clerk	2 hours	20/hr	\$40
TOTAL			\$400 X 3 = \$1,200/YR

(3) The probable costs and benefits to the Attorney General's Office -- The rulemaking does not impose costs on the AGO.

The rulemaking would benefit the AGO in that it would relieve the AGO of having to represent the Department in an estimated 3 additional appeals, estimated as follows:

Savings associated with obtaining 3 additional settlements:

Assistant attorney general	16 hours	70/hr	\$1,120
AGO clerk	2 hours	20/hr	\$40
TOTAL			\$1,160 X 3 = \$3,480/YR

(The savings derive from not having to prepare motions for a hearing and not having to represent the Department at a hearing.)

(4) The probable costs and benefits to the potential administrative appellant -- The potential administrative appellant may be a political subdivision, a business, or a natural person.

The rulemaking does not impose costs on the potential administrative appellant, because the rulemaking is not creating or removing legal rights, duties, or privileges under the law. Rather, the rulemaking merely clarifies existing law which the Department is obligated to follow whether through rulemaking or as a matter of policy.

The benefits to the potential administrative appellant consist of providing the appellant with the option to settle a contested case as under A.R.S. § 41-1092.06.

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The Department has no data with which to estimate the typical cost of preparing and filing an appeal that would be settled. For the purposes of this cost-benefit analysis, the Department assigns a conservative savings of \$400 in preparing and filing a request for a hearing, which assumes the potential appellant is not represented by counsel. Assuming, as above, that 3 contested case appeals would be settled informally, the Department estimates the following total savings would accrue to potential appellants: $\$400 \times 3 = \$1,200/\text{YR}$.

c. General description of the probable impact on private and public employment:

The probable impact on private and public employment would be positive, to the extent that the savings described above would be available for hiring and maintaining personnel.

d. Statement of the probable impact on small businesses and consumers:

The probable impact on small businesses is the same as for other potential administrative appellants, which is positive. The probable impact on consumers would be positive to the extent that the savings described above would be available to consumers in the form of lower prices on consumer goods and services provided by the potential administrative appellant.

e. Statement of the probable effect on state revenues:

The probable effect on state revenues would be positive, to the extent that the agencies' savings described above would be available for other uses.

f. Description of less intrusive and less costly alternatives, if any:

The Department is not aware of any less intrusive or less costly alternatives that would confer appealable agency action rights also upon contested case appellants.

10. A description of the changes between the proposed rules, including supplemental notices, and final rules (if applicable):

With the exception of the withdrawal of R18-1-202 from this rule making, the changes between the rules proposed in the original and supplemental notices of proposed rulemaking and the rules in this notice are wholly in response to comments received during the public comment period. Accordingly, the changes are described with the Department's responses to public comments in the answer to Question 11, below. R18-1-202 is addressed in a supplemental notice filed with the Secretary of State on May 28, 1999.

11. A summary of the principal comments and the agency response to them:

With the exception of the withdrawal of R18-1-202 from this rulemaking, changes between the proposed rules and the rules in this final notice are based on formal public and Governor's Regulatory Review Council ("GRRC") staff comments on the Notice of Proposed Rulemaking and the Notice of Supplemental Proposed Rulemaking identified in the answer to Question 4, above. The Arizona Chamber of Commerce, the City of Chandler, the law firm of Squire, Sanders & Dempsey, and the law firm of Quarles & Brady commented on the notices of proposed rule making. The Chamber of Commerce commented twice and generally opposes the rule making. The City of Chandler commented once, supports the rule making, and made recommendations. Squire, Sanders & Dempsey commented once, did not expressly support or oppose the rulemaking, but made recommendations. Quarles & Brady commented once, did not expressly support or oppose the rulemaking, but made recommendations. The formal comments, Department responses, and corresponding rule text changes are discussed below.

a. Comments on the Applicability of the Rules

(R18-1-201)

One commenter stated that the currently effective rules at R18-1-201 through R18-1-219, which the Department made to govern the conduct of in-house hearings, continue to apply to formal proceedings lawfully before the Department and should not be repealed. Another commenter argued that R18-1-201 through R18-1-219 do not continue to apply to any formal proceedings and should be repealed because current legislation does not authorize the Department to hold formal adjudicative proceedings. Each of these positions and related comments, including the GRRC staff comments, are considered in turn.

(1) Comment that R18-1-201 through R18-1-219 should not be repealed

One commenter stated that the currently effective rules at R18-1-201 through R18-1-219 are still needed, because A.R.S. Title 49 presently requires or authorizes, and may in the future require or authorize, the Department to conduct formal adjudicative proceedings rather than the OAH or another body of formal administrative adjudication. Because these rules have continuing and possible future viability, they should not be repealed as was originally proposed.

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The Department agrees it may need to conduct in-house proceedings pursuant to current and future law. For instance, A.R.S. § 49-1017(E) requires the Department to conduct in-house proceedings to allocate liability for leaking underground storage tanks (“LUSTs”), if certain statutory conditions are met. This statute contemplates the Department shall conduct the proceeding rather than the OAH or another body of formal administrative adjudication. Also, the legislature may in the future require the Department to conduct additional adjudicative proceedings in-house. Arguably, the Department could use the currently effective rules at R18-1-201 through R18-1-219 to govern the conduct of such proceedings.

The GRRC staff agree the Department may have authority now and in the future to conduct in-house adjudicative proceedings; however, the GRRC staff interpret A.R.S. § 41-1092.02 to require in-house proceedings to be conducted using the recently made OAH hearing rules rather than the currently effective rules at R18-1-201 through R18-1-219.

The Department does not agree with the GRRC staff’s interpretation of A.R.S. § 41-1092.02. However, the Department’s desire to provide a defined set of due process protections during its conduct of in-house proceedings would be served using either the protections codified at R18-1-201 through R18-1-219 or in the new OAH hearing rules.

In the interest of moving this rulemaking forward, the Department has consented to amend the rulemaking to (1) repeal the currently effective rules at R18-1-201 and R18-1-203 through R18-1-219, (2) revise new Section R18-1-201(B) to refer to new Sections R18-1-206 and R18-1-207, (3) add new Section R18-1-206 which specifies the Department shall rely on the OAH’s new hearing rules for guidance in the conduct of in-house adjudicative proceedings, and (4) add new Section R18-1-207 which provides the mechanism by which parties may request a rehearing or review of decisions arising from formal adjudication before the OAH or the Department. However, after further consideration and after comment from the regulated community, the formerly proposed R18-1-201(B) was deemed confusing and has since been deleted. As a result of the deletion of subsection (B), the need for subsections in R18-1-201 was eliminated. Thus, the formerly proposed R18-1-201(A) is renumbered as R18-1-201. As noted before, R18-1-202 will be addressed in a separate supplemental notice apart from this rulemaking.

(2) Comment that R18-1-201 through R18-1-219 should be repealed

One commenter stated that the currently effective rules at R18-1-201 through R18-1-219 should be repealed because they have no viability, for several reasons.

The Department decision, discussed above, to repeal the currently effective rules at R18-1-201 through R18-1-219 makes a response to this comment unnecessary.

(3) Comment that the rules should also cross-reference Title 41, Chapter 6, Article 6

One commenter stated that the applicability section of the rules should cross-reference to Title 41, Chapter 6, Article 6 in addition to cross-referencing Title 41, Chapter 6, Article 10, because Article 6 applies to contested cases required or authorized to be conducted by the Department.

The Department decision, discussed above, to repeal the currently effective rules at R18-1-201 through R18-1-219 makes such a cross-reference unnecessary.

(4) Changes from the proposed text

The changes from the September 11, 1998 Notice of Supplemental Proposed Rulemaking are based on the above comments and responses. Deletions from the proposed text are indicated by strike-out. Additions to the proposed text are capitalized. As stated earlier, R18-1-202 is withdrawn from this rulemaking and is addressed in a separate supplemental notice filed with the Secretary of State on May 28, 1999.

R18-1-201. Applicability

~~**A.** Sections R18-1-202 through R18-1-205 AND R18-1-207 govern NOTICES OF administrative appeal filed with the Department that constitute either a contested case as defined at A.R.S. § 41-1001 or an appealable agency action as defined at A.R.S. § 41-1092 and that are required under A.R.S. § 41-1092.02 or another Arizona statute to be conducted by the AND REQUESTING A HEARING BEFORE THE Office of Administrative Hearings of the Department of Administration or by a body of formal administrative adjudication other than the Department.~~

~~**B.** In addition to A.R.S. §§ 41-1061 through 41-1067, sections R18-1-202, R18-1-204, and R18-1-206 through R18-1-222 govern the administration of contested case hearings required under the Arizona Revised Statutes or implementing rules to be conducted by the Department and not required under A.R.S. § 41-1092.02 or another Arizona statute to be conducted by the Office of Administrative Hearings of the Department of Administration or by another body of formal administrative adjudication.~~

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R18-1-206. ADJUDICATIVE PROCEEDINGS BEFORE THE DEPARTMENT

THE DEPARTMENT SHALL USE RULES OF THE OFFICE OF ADMINISTRATIVE HEARINGS TO GOVERN THE INITIATION AND CONDUCT OF FORMAL ADJUDICATIVE PROCEEDINGS BEFORE THE DEPARTMENT.

R18-1-207. REQUESTS FOR REHEARING OR REVIEW

A PARTY TO A FORMAL ADJUDICATIVE PROCEEDING BEFORE THE OFFICE OF ADMINISTRATIVE HEARINGS OR THE DEPARTMENT MAY OBTAIN A REHEARING OR REVIEW OF THE DECISION THAT IS BASED ON THE PROCEEDING, AS FOLLOWS:

1. THE PARTY SHALL FILE WITH THE DEPARTMENT A WRITTEN MOTION FOR REHEARING OR REVIEW OF THE DECISION NOT LATER THAN 30 DAYS AFTER SERVICE OF THE DECISION UPON THE PARTY.
2. AN OPPOSING PARTY MAY FILE WITH THE DEPARTMENT A WRITTEN RESPONSE TO THE MOTION FOR REHEARING OR REVIEW NOT LATER THAN 15 DAYS AFTER SERVICE OF THE MOTION FOR REHEARING OR REVIEW UPON THE OPPOSING PARTY.
3. SERVICE IS COMPLETE ON PERSONAL SERVICE OR 5 DAYS AFTER THE DATE THE DECISION OR MOTION IS MAILED TO THE PARTY OR OPPOSING PARTY.
4. THE DIRECTOR MAY REQUIRE THE FILING OF WRITTEN BRIEFS UPON THE ISSUES RAISED IN THE MOTION OR RESPONSE AND MAY PROVIDE FOR ORAL ARGUMENT.
5. THE DIRECTOR SHALL DECIDE WHETHER TO GRANT A MOTION FOR REHEARING OR REVIEW OF THE DECISION WITHIN 15 DAYS AFTER THE RESPONSE TO THE MOTION IS FILED OR, IF A RESPONSE IS NOT FILED, WITHIN 5 DAYS AFTER THE EXPIRATION OF THE RESPONSE PERIOD. THE DIRECTOR SHALL GRANT A REHEARING OR REVIEW FOR ANY OF THE FOLLOWING REASONS AND SHALL SPECIFY THE REASONS:
 - a. THE DECISION IS NOT JUSTIFIED BY THE EVIDENCE OR IS CONTRARY TO LAW.
 - b. THERE IS NEWLY DISCOVERED MATERIAL EVIDENCE WHICH COULD NOT WITH REASONABLE DILIGENCE HAVE BEEN DISCOVERED AND PRODUCED AT THE ORIGINAL PROCEEDING.
 - c. 1 OR MORE OF THE FOLLOWING HAS DEPRIVED THE PARTY OF A FAIR HEARING:
 - i. IRREGULARITY OR ABUSE OF DISCRETION IN THE CONDUCT OF THE PROCEEDING.
 - ii. MISCONDUCT OF THE DEPARTMENT, ITS HEARING OFFICER, OR THE PREVAILING PARTY.
 - iii. ACCIDENT OR SURPRISE WHICH COULD NOT HAVE BEEN PREVENTED BY ORDINARY PRUDENCE.

b. Comments on Contested Case Procedures

(R18-1-203)

There were no comments concerning the Department's application of appealable agency action procedures to contested cases, although other comments indicated a need to clarify that the contested cases governed by this Section are those that are subject to the requirements of A.R.S. Title 49, Chapter 6, Article 10 and not Article 6.

(1) Changes from the proposed text

Subsection (A) is amended to clarify that the contested cases being discussed are those that are subject to the requirements of A.R.S. Title 49, Chapter 6, Article 10 and not Article 6. This amendment is capitalized. (The organization of the final text is based in part on GRRC staff comments on the original Notice of Proposed Rulemaking.)

R18-1-203. Contested Case Procedures

A. Subject to the provisions of A.R.S. §§ 41-1092.01 and 41-1092.02 and except as provided in subsection (B), the Department shall apply the notice and informal settlement conference provisions of A.R.S. §§ 41-1092.03 and 41-1092.06 to contested cases THAT ARE APPEALABLE THROUGH THE OFFICE OF ADMINISTRATIVE HEARINGS.

B. If A.R.S. Title 49 provides a time limit on the filing of a notice of administrative appeal, then the person filing the notice of administrative appeal shall comply with that filing time limit.

c. Comments on Maintaining Record of Administrative Appeal

(R18-1-204)

The Department received 3 comments pertaining to this Section. Each of these comments is considered in turn.

(1) Comment that the rule is unclear as to what records will be maintained

One commenter stated that the rule is unclear regarding precisely what records will be maintained, such as the record before the appeal, the record of appeal, the record of the OAH hearing, or all of these records.

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It is the intention of the Department to maintain records of the proceeding, which shall include those portions of the record before the appeal that were utilized by the administrative law judge in arriving at a recommended decision, as well as those records submitted to the Department by the OAH that pertain to the appeal. The proposed rule is revised to reflect this intention.

(2) Comment that the Department does not have jurisdiction to maintain the record

One commenter stated the OAH is the agency which has control of the record of the hearing, and that until the OAH makes its implementing rules, it is premature to assert that the Department shall preserve *the* record.

The proposed rule is revised to reflect the Department shall maintain *a* record of the administrative appeal.

(3) Comment that a 3-year limitation upon the preservation of a record may not be sufficient

One commenter stated the Department's record should be maintained beyond 3 years if an appeal of the matter is still pending.

The proposed rule is revised to reflect the Department shall maintain its record of the appeal for 3 years unless an appeal of the matter is still pending.

(4) Changes from the proposed text

There are no changes from the Notice of Supplemental Proposed Rulemaking.

R18-1-204. Record of Administrative Appeal

The Department shall preserve a record of an administrative appeal of a contested case or appealable agency action for a period of 3 years commencing on the date the notice of appeal is filed with the Department or during the time an appeal of the matter is still pending, whichever is longer. If not made confidential by law, the Department shall make the record available for public inspection upon request.

d. Comments on Notices of Intent to Rely on License Application Components as Submitted

(R18-1-205)

The Department received 5 comments pertaining to this Section. Each of these comments is considered in turn.

(1) Comment as to why the rule is not being placed with the Licensing Time-frames rules

One commenter inquired as to why the Department is not placing the substance of this Section in the Department's unitary rulemaking on licensing time-frames.

The Department responds that this Section applies to all license applications, not just those subject to time-frames requirements.

(2) Comments that upon receipt of a notice of intent to rely on components as submitted, the Department should accelerate to a final licensing decision

Two commenters were concerned that the Department might delay a licensing decision until the end of the applicable licensing time-frame, and then deny the license based solely on the applicant's submittal early in the time-frame of a notice of intent to rely on the application components as submitted. The commenter stated the rule should contain a requirement that if the Department denies a license based on refusal of the applicant to provide the requested administrative completeness or substantive review components, then it should do so within a short time after receiving the applicant's notice of intent to rely on the components as submitted.

The Department responds that it sometimes is uncertain whether the refusal of an applicant to provide the missing or requested components must result in denial of the license, until later in the time-frame when the Department has evaluated the totality of information necessary to reach an informed decision. Sometimes, the information that may alleviate the need for the missing information is obtained during public hearings and through public comments that by definition are part of the substantive review time-frame which occurs after the administrative completeness review time-frame. See A.R.S. § 41-1072(3). Requiring the Department to accelerate to a denial of the license in all instances would preclude the ability of the Department to consider information obtained during substantive review that might alleviate the need for the requested information.

Additionally, the Department often continues to work with the applicant even after receiving notification that the applicant will not provide the requested information, in an effort to arrive at alternative bases or conditions for granting the license, particularly in the areas of RCRA, NPDES, and Aquifer Protection permitting. Requiring the Department to decide to deny the license shortly after receiving the applicant's notice of intent to rely on application

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components as submitted would preclude the Department from working with the applicant to find alternative means by which the Department may grant or conditionally grant the license.

Finally, requiring the Department to accelerate to a denial of the license in all instances may preclude the ability of the applicant to preserve the interim status of a permit or maintain the enforcement shield conferred upon the applicant during licensing discussions with the Department.

For these reasons, the proposed rule does not contain a uniform acceleration clause. However, the Department agrees that it should deny a license as soon as it determines that the applicant's failure to provide the missing or requested components makes it impossible for the Department to approve or conditionally approve the license.

(3) Comment that the rule should make a meeting available upon request of the applicant to discuss technical disagreements over the application

One commenter recommended that the rule should include a provision that the Department, upon the request of the applicant, shall hold a meeting to discuss disagreements over the Department's notice of application deficiencies or request for additional information. The commenter stated that such a provision would provide a dispute resolution rule that would be applicable to all licensing.

The Department agrees that the rule approaches being a complete mechanism for informally resolving technical disagreements, in that technical disagreements with the Department tend to be addressed following the Department's issuance of a formal written notice of application deficiencies or request for additional information. For instance, if the applicant is requesting approval of a remedial investigation under A.R.S. § 49-285(B), the Department may respond with a written notice under R18-1-205(A) including an explanation of why the Department needs the missing information to approve the remedial investigation. Under R18-1-205(B), (C), and (D), the applicant can respond to the Department's notice by submitting to the Department a notice of intent to rely on the application components as submitted including an explanation of the applicant's disagreement over the Department's notice, and possibly including other information that may form an alternative basis for the Department to approve the investigation. Under R18-1-205(E), the Department considers the applicant's notice and any counterproposal, and may continue the iterative process by modifying its request and resubmitting it to the applicant under R18-1-205(A); alternatively, the Department may conclude the iterative process and proceed to a licensing decision which would be administratively appealable. Amending the rule to provide for a meeting to discuss the Department's requests and the applicant's responses may better facilitate informal resolution of the underlying technical disagreements concerning the § 49-285(B) request.

A uniform rule requiring a meeting upon request would not, however, be appropriate to other licensing activities. For example, such a rule would not be appropriate to the reviewing of applications for vehicle inspection compliance certification under A.R.S. § 49-542 and R18-2-1006, because the Department makes the decision whether to grant or deny the certification within a few minutes while the vehicle is at the inspection location; in 1996, the Department received approximately 1,400,000 applications for this license and issued approximately 980,000 certifications. Given the short licensing time-frame (5-10 minutes) and the volume of applications, it would be impracticable to subject the inspection process to a general rule that requires the Department to hold a meeting to resolve disagreements upon the applicant's request before the Department decides to issue or deny the certification.

Additionally, amending the rule to require a meeting upon request would not ensure that informal resolution of disagreements will occur in every instance of licensing because the Department's exercise of R18-1-205 is discretionary. Neither the licensing time-frames statutes nor R18-1-205 require the Department in every case of licensing to notify the applicant that the application is incomplete or that additional information is needed to reach an informed licensing decision; rather, providing such notice or request is elective. See A.R.S. §§ 41-1074 and 41-1075. In those licensing categories or instances where it is not appropriate or useful to provide the applicant with the opportunity to amend an application, the Department may decide not to implement R18-1-205. In such cases, the applicant would not be able to rely on R18-1-205 as a vehicle for resolving technical disagreements over the application.

For these reasons, the Department concludes that R18-1-205 is not the appropriate place for requiring the Department to grant informal meetings to resolve disagreements upon request. A mechanism for resolving technical disagreements is best imposed on a program-specific basis in the statutes or rules that govern the particular program.

(4) Comment that the rule is in conflict with A.R.S. § 49-202

One commenter stated that the rule governing notices of intent to rely on application components as submitted is in conflict with A.R.S. § 49-202. That statute allows a party to treat a 2nd request for supplemental information as a denial of a section 401 certification which constitutes a contested case administratively appealable under A.R.S. § 49-202(G).

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The Department agrees the rule may conflict with A.R.S. § 49-202. R18-1-205 is revised to include a subsection (F) which makes an exception for statutes such as A.R.S. § 49-202. In the case of A.R.S. § 49-202 specifically, R18-1-205 shall continue to apply to all notices by the Department that an application for 401 certification is missing required administrative completeness components, as well as to the Department's *1st* request for supplemental information on the application.

(5) Comment that the rule should require the Department to explain its requests for missing license application components or additional information

One commenter expressed concern that it is difficult for a license applicant to make an informed decision on whether to rely on license application components as submitted rather than respond to the Department's request for the missing or additional information, unless the Department explains why it is requesting the additional or missing information.

The Department agrees. The rule is revised at subsection (A) to require the Department to include a brief explanation in support of its notice of missing application components or request for additional information.

(6) Changes from the proposed text

There are no changes from the September 11, 1998, Notice of Supplemental Proposed Rulemaking. (The organization of the final text is based in part on GRRRC staff comments on the original Notice of Proposed Rulemaking.)

R18-1-205. Notice of Intent to Rely on License Application Components as Submitted

A. If the Department submits to a licence applicant a notice that the application is missing required components, is substantively deficient, or is otherwise deficient or submits to a license applicant a request for additional information to enable the Department to reach a decision to grant the license, then the Department shall include a brief explanation of the basis of or reason for the notice or request.

B. If a license applicant receives a notice from the Department that the application is lacking application components, is substantively deficient, or is otherwise deficient, or receives from the Department a request for additional information, the applicant, in lieu of submitting some or all of the components or information identified by the Department, may submit to the Department a written notice of intent to rely on the application components as submitted. The applicant shall submit the notice of intent to rely on the application components as submitted within the time specified in the Department's notice of deficiencies or request for additional information. If the Department's notice of deficiencies or request for additional information does not specify a time, then the applicant shall submit the notice of intent to rely on the application components as submitted within 60 days after the mailing date of the Department's notice of deficiencies or request for additional information.

C. A notice of intent to rely on the application components as submitted shall include the following:

1. Name of the applicant.
2. License application number or other identification.
3. Date of the Department notice or request in question.
4. Identification of the application component or components objected to with reasons for the objection or objections.
5. A statement that the applicant intends to rely on the application components as submitted as the basis upon which the Department may determine whether to grant or deny the license.

D. A license applicant may submit additional license application components or other information at the same time the applicant submits a notice of intent to rely on the application components as submitted.

E. The Department, after receiving a notice of intent to rely on the license application components as submitted, shall do 1 of the following:

1. Rescind its request for the application component or components objected to in the notice.
2. Modify its request for the application component or components objected to in the notice.
3. Grant the license unconditionally, meaning that the Department did not add conditions not requested by the applicant.
4. Grant the license with conditions, meaning that the Department added conditions not requested by the applicant.
5. Deny the license.

F. To the extent that a license provision of the Arizona Revised Statutes requires different treatment of licensing notifications of application deficiencies or licensing requests for additional information, this Section does not apply.

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

Not applicable. There are no other matters prescribed by statute that are applicable to the Department within the context of this rulemaking or related rulemakings.

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

Not applicable. There are no incorporations by reference in this rulemaking.

14. Was this rule previously made as an emergency rule?

No, this rule was not previously made as an emergency rule.

15. The full text of the rule follows:

TITLE 18. ENVIRONMENTAL QUALITY

**CHAPTER 1. DEPARTMENT OF ENVIRONMENTAL QUALITY
ADMINISTRATION**

**ARTICLE 2. PRACTICE AND PROCEDURE – CONTESTED CASES
ADMINISTRATIVE APPEALS**

Sections

~~R18-1-201. Contested case hearings~~

R18-1-201. Applicability

~~R18-1-203. Hearing officer~~

R18-1-203. Contested Case Procedures

~~R18-1-204. Procedures for motions~~

R18-1-204. Record of Administrative Appeal

~~R18-1-205. Motions for more definite statement~~

R18-1-205. Notice of Intent to Rely on License Application Components as Submitted

~~R18-1-206. Service of documents other than subpoenas~~

R18-1-206. Adjudicative Proceedings Before the Department

~~R18-1-207. Filing; formalities~~

R18-1-207. Requests for Rehearing or Review

~~R18-1-208. Computation of time~~

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~~R18-1-211. Conferences~~

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~~R18-1-213. Communications regarding matters related to a contested case~~

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~~R18-1-215. Evidence~~

~~R18-1-216. Subpoenas~~

~~R18-1-217. Decisions and orders~~

~~R18-1-218. Rehearing or review of decision~~

~~R18-1-219. Record~~

**ARTICLE 2. PRACTICE AND PROCEDURE – CONTESTED CASES
ADMINISTRATIVE APPEALS**

R18-1-201. Contested case hearings Repealed

This Article shall govern contested case hearings held before the Department in all proceedings in which the legal rights, duties or privileges of a person are required by Title 49 of the Arizona Revised Statutes; by Title 41, Chapter 6, Article 6 of the Arizona Revised Statutes; or by rule, to be determined after an opportunity for a hearing. These rules of practice are not applicable to:

1. Oral proceedings held during rule making as described in Article 3.
2. General public hearings held pursuant to Article 4.
3. Hearings before the Air Pollution Control Hearing Board.
4. Hearings before the Water Quality Appeals Board, pursuant to A.R.S. §49-323.
5. Hearings before an administrative law judge in the Arizona Department of Administration, pursuant to A.R.S. §49-321.
6. Personnel matters, or resolution of disputes involving contracts, held before the Department of Administration.

R18-1-201. Applicability

Sections R18-1-202 through R18-1-205 and R18-1-207 govern notices of administrative appeal filed with the Department and

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requesting a hearing before the Office of Administrative Hearings or a body of formal administrative adjudication other than the Department.

R18-1-203. Hearing officer Repealed

- A.** All contested case hearings under this Article shall be presided over by a hearing officer appointed by the Director.
- B.** The hearing officer shall have the following qualifications:
 - 1. Be a graduate of a law school provisionally or fully approved by the American Bar Association at the time of the hearing officer's graduation.
 - 2. Be free of any conflict of interest regarding the matter to be considered.
- C.** The hearing officer shall have the following duties:
 - 1. Regulate the course of the contested case hearing.
 - 2. Rule upon procedural matters incidental to the contested case hearing.
 - 3. Make findings of fact, conclusions of law and recommendations thereon to be submitted to the Director for decision.
- D.** The hearing officer, as well as all parties, may question witnesses.

R18-1-203. Contested Case Procedures

- A.** Subject to the provisions at A.R.S. §§ 41-1092.01 and 41-1092.02 and except as provided at subsection (B), the Department shall apply the notice and informal settlement conference provisions at A.R.S. §§ 41-1092.03 and 41-1092.06 to contested cases that are appealable through the Office of Administrative Hearings.
- B.** If A.R.S. Title 49 provides a time limit on the filing of a notice of administrative appeal, then the person filing the notice of administrative appeal shall comply with that filing time limit.

R18-1-204. Procedures for motions Repealed

- A.** Motions calling for determination of any matter of law shall be filed with the hearing officer in writing. However, such motions may be made orally during a contested case hearing.
- B.** In the case of prehearing motions, any party may file a response within ten days after service of such motion, and shall serve the response upon the moving party.
- C.** The moving party shall have ten days after service of a response to file a reply to that response. These time limits for prehearing motions, responses and replies may be shortened or extended by the hearing officer.
- D.** Prehearing motions shall be considered on the written materials submitted by the parties. No oral argument shall be heard on such matters filed prior to the commencement of the contested case hearing unless the hearing officer so directs.
- E.** All motions and objections made during the course of the contested case hearing shall be made to the hearing officer who shall rule thereon or take them under advisement for later determination. Objections to the admission or exclusion of evidence shall be made on the record, shall be brief, and shall state the grounds for the objection.

R18-1-204. Record of Administrative Appeal

The Department shall preserve a record of an administrative appeal of a contested case or appealable agency action for a period of 3 years commencing on the date the notice of appeal is filed with the Department or during the time an appeal of the matter is still pending, whichever is longer. If not made confidential by law, the Department shall make the record available for public inspection upon request.

R18-1-205. Motions for more definite statement Repealed

Within ten days of service of a notice as provided by R18-1-202, any person served with the notice may file a motion with the hearing officer for a more definite statement of the matters stated therein. Such motion shall state the reasons why the notice should be clarified or provide more detail. If the motion is granted by the hearing officer, the order granting such motion shall set the time period in which the more definite statement shall be filed.

R18-1-205. Notice of Intent to Rely on License Application Components as Submitted

- A.** If the Department submits to a license applicant a notice that the application is missing required components, is substantively deficient, or is otherwise deficient, or submits to a license applicant a request for additional information to enable the Department to reach a decision to grant the license, then the Department shall include a brief explanation of the basis of or reason for the notice or request.
- B.** If a license applicant receives a notice from the Department that the application is lacking application components, is substantively deficient, or is otherwise deficient, or receives from the Department a request for additional information, the applicant, in lieu of submitting some or all of the components or information identified by the Department, may submit to the Department a written notice of intent to rely on the application components as submitted. The applicant shall submit the notice of intent to rely on the application components as submitted within the time specified in the Department's notice of deficiencies or request for additional information. If the Department's notice of deficiencies or request for additional information does not specify a time, then the applicant shall submit the notice of intent to rely on the application components as submitted within 60 days after the mailing date of the Department's notice of deficiencies or request for additional information.
- C.** A notice of intent to rely on the application components as submitted shall include the following:

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1. Name of the applicant.
 2. License application number or other identification.
 3. Date of the Department notice or request in question.
 4. Identification of the application component or components objected to with reasons for the objection or objections.
 5. A statement that the applicant intends to rely on the application components as submitted as the basis upon which the Department may determine whether to grant or deny the license.
- D.** A license applicant may submit additional license application components or other information at the same time the applicant submits a notice of intent to rely on the application components as submitted.
- E.** The Department, after receiving a notice of intent to rely on the license application components as submitted, shall do 1 of the following:
1. Rescind its request for the application component or components objected to in the notice.
 2. Modify its request for the application component or components objected to in the notice.
 3. Grant the license unconditionally, meaning that the Department did not add conditions not requested by the applicant.
 4. Grant the license with conditions, meaning that the Department added conditions not requested by the applicant.
 5. Deny the license.
- F.** To the extent that a licensing provision of the Arizona Revised Statutes requires different treatment of licensing notifications of application deficiencies or licensing requests for additional information, this Section does not apply.

R18-1-206. Service of Documents Other Than Subpoenas Repealed

- A.** ~~Service of documents under these rules, except subpoenas, shall be made by personal service on, or by mail addressed to, the Department, the party, and the party's attorney, if the name and address of the party's attorney has been provided to the Department at the time of the preparation of such documents. Service shall be deemed made at the time of personal service of the document or upon deposit of the document in the United States mails, postage prepaid, in a sealed envelope, and addressed to the person being served, at the last known address of record in the Department.~~
- B.** ~~Proof of service shall be made by filing with the Director a statement in writing that service has been made, stating whether service was made in person or by mail, and signed by the party or the party's attorney. Such statement may be included with the document filed.~~

R18-1-206. Adjudicative Proceedings Before the Department

The Department shall use rules of the Office of Administrative Hearings to govern the initiation and conduct of formal adjudicative proceedings before the Department.

R18-1-207. Filing; Formalities Repealed

- A.** ~~All documents required to be filed in any contested case shall be filed with the Department within the time limit, if any, for such filing, and service thereof shall be made simultaneously on all other parties to the contested case. Filing shall be deemed to have been made when a document is received by the Department.~~
- B.** ~~A docket of all contested cases shall be maintained by the Department and each contested case shall be assigned a number.~~
- C.** ~~The originals of all pleadings shall be filed. All documents filed shall contain the address and telephone number of the filing party or party's attorney.~~
- D.** ~~Except as otherwise provided by this Article, orders shall only be signed by the Director.~~

R18-1-207. Requests for Rehearing or Review

A party to a formal adjudicative proceeding before the Office of Administrative Hearings or the Department may obtain a rehearing or review of the decision that is based on the proceeding, as follows:

1. The party shall file with the Department a written motion for rehearing or review of the decision not later than 30 days after service of the decision upon the party.
2. An opposing party may file with the Department a written response to the motion for rehearing or review not later than 15 days after service of the motion for rehearing or review upon the opposing party.
3. Service is complete on personal service or 5 days after the date the decision or motion is mailed to the party or opposing party.
4. The Director may require the filing of written briefs upon the issues raised in the motion or response and may provide for oral argument.
5. The Director shall decide whether to grant a motion for rehearing or review of the decision within 15 days after the response to the motion is filed or, if a response is not filed, within 5 days after the expiration of the response period. The Director shall grant a rehearing or review for any of the following reasons and shall specify the reasons:
 - a. The decision is not justified by the evidence or is contrary to law.
 - b. There is newly discovered material evidence which could not with reasonable diligence have been discovered and produced at the original proceeding.
 - c. 1 or more of the following has deprived the party of a fair hearing:
 - i. Irregularity or abuse of discretion in the conduct of the proceeding.
 - ii. Misconduct of the Department, its hearing officer, or the prevailing party.

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iii. Accident or surprise which could not have been prevented by ordinary prudence.

~~R18-1-208. Computation of Time~~

- ~~A.~~ When a document is served by mail, any limitation on the time in which a response may be made thereto shall be increased by 5 days, or by 7 days for parties residing outside of Arizona state borders.
- ~~B.~~ In computing any period of time prescribed or allowed by these Rules, the day of the act, event, or default, after which the designated period of time begins is not to be included. The last day of the period so computed is to be included, unless it is Saturday, Sunday, or a legal holiday, in which event the period runs until the end of the next day which is neither Saturday, Sunday, nor a holiday. Intermediate Saturdays, Sundays and holidays shall be included in the computation.

~~R18-1-209. Appearance and Practice before the Department~~

- ~~A.~~ An individual may appear in person at a contested case hearing in person. A corporation, partnership or other entity may appear through a duly authorized representative. The Department may appear through the Attorney General.
- ~~B.~~ Whether or not participating in person, any party may be advised or represented at the party's own expense by attorney.
- ~~C.~~ When an attorney other than the Attorney General appears before the hearing officer, the names and addresses of the attorney and attorney's client shall be provided to the hearing officer.

~~R18-1-210. Intervention~~

- ~~A.~~ A person seeking to intervene in any contested case shall file a petition for intervention, in accordance with this Section, specifying why the petitioner should be allowed to intervene.
- ~~B.~~ Requirements for petitions for intervention are as follows:
 - 1. A petition shall be filed with the Department and served upon all parties at least 15 days prior to the hearing.
 - 2. A petition shall demonstrate that the petitioner's legal rights, duties privileges, immunities, or other legal interests may be substantially affected by the contested case.
 - 3. Any party may file a response to the petition for intervention within 5 days of service of the petition upon the party.
- ~~C.~~ The hearing officer shall consider the following in deciding on the petition:
 - 1. Whether the proposed petition for intervention is in the interests of justice.
 - 2. Whether it may unduly delay or prejudice the contested case hearing.
 - 3. Whether the applicant's interest is represented by any other party to the contested case.
- ~~D.~~ The hearing officer shall decide on the petition for intervention at least 3 days prior to the hearing date, and shall promptly notify the petitioner and all parties of the decision. The hearing officer may continue a contested case hearing or provide for a prehearing conference, or both, if a petition for intervention is filed so that a party may have sufficient time to prepare for the hearing or to file a response to the petition.

~~R18-1-211. Conferences~~

- ~~A.~~ Upon a motion by a party or on the initiative of the Director or the hearing officer, the hearing officer may order a prehearing conference. The hearing officer shall give all parties and the Attorney General written notice of any prehearing conference. At a prehearing conference, any actions that will secure the just, speedy and inexpensive determination of the case may be considered, including the following:
 - 1. Formulation, reduction or simplification of the issues.
 - 2. Disposition of preliminary legal issues, including ruling on any prehearing motions.
 - 3. Stipulations to facts and legal conclusions.
 - 4. Stipulations to the admission of certain evidence.
 - 5. Identification of evidence and disposition of any question about the authenticity of that evidence.
 - 6. Identification of witnesses.
 - 7. Resolution of the case without a hearing.
- ~~B.~~ During or after a the prehearing conference, the hearing officer may issue appropriate orders in accordance with Subsection (A) of this Section.
- ~~C.~~ The action taken by the hearing officer during or after a the prehearing conference shall be made a part of the record and shall control the subsequent course of the hearings.

~~R18-1-212. Continuances~~

- ~~A.~~ The hearing officer may order a continuance or grant a recess.
- ~~B.~~ Any party may file a motion for a continuance. For consideration, the motion shall be filed at least 15 days prior to the date set for hearing. The motion shall state the need for the requested postponement.
- ~~C.~~ As soon as practicable after receiving a motion for a continuance, an order shall be issued granting or denying the motion and briefly stating the reasons for the order.

~~R18-1-213. Communications Regarding Matters Related to a Contested Case~~

- ~~A.~~ During a contested case, a party or person directly or indirectly affected by the outcome of a contested case shall not make or knowingly cause to be made an oral or written communication regarding any matter related to that contested case, to

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the Director, the hearing officer, or other Department employee or consultant who is, or may reasonably be expected to be, involved in the decision of the contested case.

- ~~B.~~ During a contested case, the Director, the hearing officer, or other Department employee, shall not make or knowingly cause to be made an oral or written communication regarding any matter related to that contested case, to a party or a person who may be directly or indirectly affected by the outcome of the contested case.
- ~~C.~~ Any person who receives an oral or written communication prohibited by this Section shall file a notice of the communication with the Department and serve a copy on the hearing officer, the Attorney General and all parties to the contested case. The notice shall include a copy of the communication, if written, or a summary of the communication, if oral.
- ~~D.~~ Upon receipt of a notice described in subsection (C), the hearing officer shall give all other parties reasonable opportunity to respond to the communication.
- ~~E.~~ This Section shall not apply to the following:
 - 1. Communications, including motions, made on the record during the course of the contested case hearing.
 - 2. Communications made in writing, if a copy of the communication is promptly served on the hearing officer, the Attorney General, and all parties to the contested case.
 - 3. Oral communications made after notice of those communications is given to all parties and the Attorney General.

R18-1-214. Reserved

R18-1-215. Evidence

All witnesses at a contested case hearing shall testify under oath or affirmation. All parties shall have the right to present such oral or documentary evidence and to conduct such cross examination as may be required for a full and true disclosure of the facts. The hearing officer shall receive relevant, probative and material evidence, rule upon offers of proof, and exclude all evidence the hearing officer has determined to be irrelevant, immaterial or unduly repetitious.

R18-1-216. Subpoenas

- ~~A.~~ Subpoenas shall be issued by the hearing officer to require the attendance and testimony of witnesses and parties and the production of reports, papers, contracts, books, accounts, documents and testimony or other evidence which are relevant, material and noncumulative either:
 - 1. At the hearing officer's discretion; or
 - 2. Upon request of a party, as long as the request complies with subsection (C).
- ~~B.~~ To be considered, any request for a subpoena shall be in writing, filed at least 10 days prior to the date set for hearing absent accident or surprise which could not have been prevented by ordinary prudence, and shall clearly identify the person or documents to be subpoenaed.
- ~~C.~~ The person to whom a subpoena is directed shall comply with its provisions unless, prior to the date set for the contested case hearing, a written request to quash or modify such subpoena is filed with the Department. To be considered, the request shall briefly but thoroughly state the reasons therefor.
- ~~D.~~ Subpoenas shall be personally served. Service of each subpoena is the responsibility of the party requesting the subpoena.

R18-1-217. Decisions and Orders

- ~~A.~~ Within 60 days after the conclusion of a contested case hearing, the Director shall issue a decision in writing and serve a copy of the decision by mail to all parties to the case or their attorneys. Final decisions shall state separately findings of fact and conclusions of law. These shall be based on evidence presented at the contested case hearing and on matters that were officially noticed.
- ~~B.~~ Decisions entered by the Director may be released for publication, except where confidential treatment is authorized by the Director.
- ~~C.~~ If no rehearing or review is requested or appeal taken within the time provided therefor, the decision shall become final.

R18-1-218. Rehearing or Review of Decision

- ~~A.~~ Except as provided in Subsection (G), any party in a contested case before the Department may file with the Director, not later than 15 days after service of a decision, a written motion for rehearing or review of the decision, specifying the particular grounds therefor. For purposes of this subsection, a decision shall be deemed to have been served when personally delivered or indicated received by certified mail to the party at the party's last known residence or place of business.
- ~~B.~~ A response to a motion for rehearing may be filed by any other party within 10 days after service of such motion upon the party. The Director may require the filing of written briefs upon the issues raised in the motion and may provide for oral argument. The Director shall decide whether to grant a motion for rehearing or review of a decision within 30 days after the motion is filed.
- ~~C.~~ A rehearing or review of a decision may be granted by the Director for any of the following causes affecting the moving party's rights:
 - 1. Irregularity in the conduct of the contested case by the Department or the hearing officer or the prevailing party, or any abuse of discretion, whereby the moving party was deprived of a fair hearing.
 - 2. Misconduct of the Department or its hearing officer, or the prevailing party.
 - 3. Accident or surprise which could not have been prevented by ordinary prudence.

4. ~~Newly discovered material evidence which could not with reasonable diligence have been discovered and produced at the original contested case hearing.~~
 5. ~~That the decision is not justified by the evidence or is contrary to law.~~
- D.** ~~The Director may affirm or modify the decision or grant a rehearing to any of the parties, and on all or part of the issues, for any of the reasons set forth in subsection (C). After giving the parties or their counsel notice and an opportunity to be heard, the Director may grant a rehearing for a reason not stated in the motion. The order shall specify the grounds on which the rehearing is granted, and the rehearing shall cover only those matters so specified.~~
- E.** ~~Not later than 15 days after a decision is issued, the Director may, independently, order a rehearing or review of the decision for any of the reasons set forth in subsection (C). The order granting such a rehearing shall specify the grounds therefor.~~
- F.** ~~When a motion for rehearing is based upon affidavits, they shall be served with the motion. An opposing party may, within 10 days after such service, serve opposing affidavits. The period may be extended for an additional period not exceeding 20 days by the Director for good cause shown or by written stipulation of the parties. Reply affidavits may be permitted by the Director.~~
- G.** ~~If in a particular decision the Director makes specific findings that the immediate effectiveness of such decision is necessary for the preservation of the public peace, health and safety, and that a rehearing or review of the decision is impracticable, unnecessary or contrary to the public interest, the decision may be issued as a final decision without an opportunity for rehearing.~~

~~R18-1-219: Record~~

~~The record of each contested case proceeding shall contain the information prescribed in A.R.S. §41-1061.E, and shall be located in the Department. The record shall be preserved for a period of three years, and, if not confidential by law, shall be made available for examination upon request.~~