

## NOTICES OF FINAL RULEMAKING

The Administrative Procedure Act requires the publication of the final rules of the state's agencies. Final rules are those which have appeared in the *Register* 1st as proposed rules and have been through the formal rulemaking process including approval by the Governor's Regulatory Review Council. The Secretary of State shall publish the notice along with the Preamble and the full text in the next available issue of the *Arizona Administrative Register* after the final rules have been submitted for filing and publication.

### NOTICE OF FINAL RULEMAKING

#### TITLE 7. EDUCATION

#### CHAPTER 2. STATE BOARD OF EDUCATION

#### PREAMBLE

- |                                    |                                 |
|------------------------------------|---------------------------------|
| <b>1. <u>Sections Affected</u></b> | <b><u>Rulemaking Action</u></b> |
| R7-2-405                           | Amend                           |
| R7-2-408                           | New Section                     |
| Article 14                         | New Article                     |
| R7-2-1401                          | New Section                     |
| R7-2-1402                          | New Section                     |
| R7-2-1403                          | New Section                     |
| R7-2-1404                          | New Section                     |
| R7-2-1405                          | New Section                     |
| R7-2-1406                          | New Section                     |
| R7-2-1407                          | 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. § 15-203(A)  
Implementing statute: A.R.S. §§ 15-183 et seq.; 15-766; 15-881; 41-1072 et seq.
- 3. Effective Date of the Rule:**  
August 24, 1999
- 4. A list of all previous notices appearing in the Register addressing the final rule:**
- R7-2-405**  
Notice of Rulemaking Docket Opening: 3 A.A.R. 2806, October 10, 1997.  
Notice of Proposed Rulemaking: 4 A.A.R. 1263, June 5, 1998.
- R7-2-408**  
Notice of Rulemaking Docket Opening: 4 A.A.R. 1232, May 29, 1998.  
Notice of Proposed Rulemaking: 4 A.A.R. 1381, June 19, 1998.
- R7-2-1401 through R7-2-1407**  
Notice of Rulemaking Docket Opening: 4 A.A.R. 1017, May 1, 1998.  
Notice of Proposed Rulemaking: 4 A.A.R. 2161, August 7, 1998.
- 5. The name and address of agency personnel with whom persons may communicate regarding the rule:**
- Name: Corinne L. Velasquez, Executive Director
- Address: State Board of Education  
1535 W. Jefferson, Room 418  
Phoenix, Arizona 85007
- Telephone: (602) 542-5057
- Fax: (602) 542-3046

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

The State Board of Education has adopted an amendment R7-2-405 pursuant to A.R.S. § 15-766(F). The amendment establishes minimum standards for hearing officers and prescribes training requirements for hearing officers.

R7-2-408 prescribes rules for use by school districts in determining the eligibility of handicapped pupils for an extended school year program. This rule was adopted pursuant to the requirements set forth in A.R.S. § 15-881(B).

The State Board of Education has adopted new rules related to charter schools. Specifically, these rules establish a process for applications, review of applications, contracts, contract requirements and revocation of charter contracts.

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

It is not anticipated that the rule amendment or new rule described herein will have any economic impact on the consumer. The amendment to R7-2-405 will assist in ensuring qualified, trained hearing officers are provided for due process hearings related to Special Education matters. In addition, the new language will ensure an equitable selection process for hearing officers.

A.R.S. § 15-881(A) requires that each school district make an extended school year program available to all handicapped pupils for whom such a program is necessary. Subsection (B) continues, requiring the State Board of Education to adopt rules, and includes the criteria for determining the eligibility of handicapped pupils in an extended school year program. The proposed language of R7-2-408 is consistent with the criteria outlined in A.R.S. § 15-881(B). Therefore, there will be no economic, small business, or consumer impact related to this proposed rule, as school districts are currently required to have extended school year programs available to all handicapped pupils for whom such a program is necessary, and the criteria for such a program is outlined in A.R.S. § 15-881.

It is not anticipated that R7-2-1401 through R7-2-1408 will have an economic, small business or consumer impact. The requirements set forth in the proposed rules are current operating procedures and are being formalized into administrative rules to ensure uniformity in the process.

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

**R7-2-405**

1. Subsection (D)(2): Delete "his/her" to conform with the *Arizona Rulemaking Manual*.
2. Subsection (D)(3): Move "or the SEA" after "child" for clarification. Change "he or she" to "the person" to conform with the *Arizona Rulemaking Manual*.
3. Subsection (F)(2): After "paragraph", add "(D) and", and change "E" to "(E)(1) through (3)" for clarification. Change "three" to "3" in 2 places; change "one" to "1", to conform with the *Arizona Rulemaking Manual*.
4. Subsection (H)(2)(b): Change "five" to "5" to conform with the *Arizona Rulemaking Manual*.
5. Subsection (H)(4): Change "or" to "and"; change "provisions" to "provision" for clarification.
6. Subsection (H)(4)(a): Add a comma and "rules" after "law" for clarification.
7. Subsection (H)(4)(b): Add "findings of fact and" after "render" for clarification.
8. Subsection (H)(6): Change "State Director of Special Education Exceptional Student Services" to "SEA" for clarification of intent.
9. Subsection (I)(1): After "requested", add "concerning long term suspension or expulsion" for clarification that an expedited hearing may be requested only concerning long term suspension or expulsion.
10. Subsection (I)(2): Add a new sentence at the end of the subsection which reads, "The strike provisions specified in subsection (F) are not applicable." for clarification of intent.
11. Subsection (J)(1)(a): Change "parties" to "party" and add "appealing" after "party" for clarification of intent.
12. Subsection (J)(1)(b)(v): Delete "an independent" and add "findings of fact and a" before "decision, for clarification of intent.
13. Subsection (J)(1)(b)(vi): Add "the" before "written"; add "of fact" after "findings" for clarification of intent.

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14. Subsection (J)(2): Change State Director of Special Education Exceptional Student Services” to “SEA” for consistency and clarification.

15. Subsection (J)(3): Add “findings of fact and” before “decision” in 2 places, for clarification of intent.

**R7-2-408**

1. Title of the Rule: Change 1st letters to uppercase to conform with the *Arizona Rulemaking Manual* and change “Students With a Disability” to “Children with Disabilities” for consistency.

2. Subsection (B): Delete “, including the parent” as the IEP team is defined as including the parent.

3. Subsection (B)(6): Add “and” after the semicolon to conform with the *Arizona Rulemaking Manual*.

4. Subsection (D): Add “need or desire for any of the following” after “on” for clarification of intent and consistency with statutory language.

5. Subsection (D)(1): Change “handicapped pupils” to “students with a disability” for consistency in terms used.

6. Subsection (D)(2): Change “a handicapped pupil” to “a student with a disability” for consistency in terms used; add “and” after the semicolon to conform with the *Arizona Rulemaking Manual*.

7. Subsection (D)(3): Change “handicapped pupils” to “students with a disability” for consistency in terms used.

**R7-2-1401 through R7-2-1408**

1. Change all references to “Board” to “Board of Education” for clarification of intent.

2. R7-2-1401, subsection (1): Add “public body or private organization” between “person” and “who” for clarification of intent and consistency with statutory language and change “who” to “that” for grammatical correction.

3. R7-2-1401, subsection (3): Delete the definition of “Board of Education” as unnecessary language and renumber subsections “(4)” through “(7)” as “(3)” through “(6)”.

4. R7-2-1401, subsection (5): Delete “State” for consistency in language used.

5. R7-2-1402, Title: Change title to uppercase letters to conform with the *Arizona Rulemaking Manual*.

6. R7-2-1402, subsection (B)(3): Change “in” to “at” and change “subcommittee” to “committee” for consistency.

7. R7-2-1402, subsection (C): Delete “or agreement” as unnecessary language.

8. R7-2-1403, subsection (A): After “et seq.”, at the end of the subsection, add “Applications shall be on forms approved by the Board.” and delete subsections (1) and (2) to reflect current policy and practice.

9. R7-2-1403, subsection (B): Change the subsection to read, “At least once per year, the Board of Education shall consider issuance of contract to approved applicants.” for consistency and clarification of intent.

10. R7-2-1403, subsection (C): Delete “and signing of a contract” as unnecessary language.

11. R7-2-1403, subsection (D): Change “in” to “at”; change “subcommittee’s” to “committee’s” and change “charter” to “contract”, for consistency and clarification.

12. R7-2-1403, subsection (E): Change “charter” to “contract” for consistency.

13. R7-2-1404, subsection (A): Change “signatory authority of the charter school” to “the applicant, or a person with signatory authority for the applicant” in 2 places, for consistency and clarification. Change “issuance of the charter” to “issuance of the contract” and “issuance of a charter” to “issuance of a contract” for consistency and clarification.

14. R7-2-1404, subsection (B): Delete “by the signatory authority” as unnecessary language.

15. R7-2-1404, subsection (C)(1): Delete “approved by the Board of Education” as unnecessary language.

16. R7-2-1405, subsection (C): Change “governing body” to “governing board” for consistency with definitions and language used.

17. R7-2-1405, subsection (D): Change “subparagraph” to “subsection” to conform with the *Arizona Rulemaking Manual*. Change “governing body” to “governing board” for consistency with definitions and language used.

18. R7-2-1406, Change all references to “Notice of Intent to Revoke Charter” to “Notice of Intent to Revoke a Contract” for clarification of intent and consistency.

19. R7-2-1406, subsection (A): Change “charter holder” to “contract holder” and add “and the governing board” at the end of the sentence for clarification and consistency.
20. R7-2-1406, subsection (B): Delete “of a charter school” after “governing board” to delete unnecessary language.
21. R7-2-1406, subsection (B)(3): Change “subparagraph” to “subsection” in 2 places to conform with the *Arizona Rulemaking Manual*.
22. R7-2-1406, subsection (C): Delete “Article 7, Chapter 2” as unnecessary language.
23. R7-2-1407, (Assumed) subsection (A): Add a comma after “minimum” to correct the punctuation.
24. R7-1-1407, subsection (2): Change “USFR” to “Uniform System of Financial Records or Uniform System of Financial Records for Charter Schools” for clarification.
25. R7-2-1408, renumbered to correct numbering error in R7-2-1403.

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

R7-2-405

Written comment was received from 32 individuals related to the proposed amendments to R7-2-405. Of the 32, 29 supported or “strongly” supported the amendments as proposed. This support was received from individuals as well as organizations and groups such as the Governor’s Council on Developmental Disabilities, Arizona Center for Disability Law, the ARC of Arizona and the Department of Health & Human Services. Three individuals supported the amendments to the rule with concerns or qualifications. Of the 3, 2 raised concerns that the requirement that a hearing officer not have represented a school district in any matter within the last year may reduce the pool of eligible, knowledgeable individuals to serve as hearing officers. The other issue raised was a procedural concern that protections needed to be created to ensure that the child’s due process rights to a timely hearing were consistently met.

During the oral public hearing proceeding, 10 individuals requested to address the Board. Two individuals indicated that they were in favor of the proposed amendments, however, they were not present when called. Eight individuals addressed the Board regarding the amendments, with 7 in favor of the amendments as proposed and 1 individual, who had also provided written comment, raised procedural issues and encouraged the Board to adopt the proposed amendments, but possibly consider a future amendment to address practical questions related to the selection process. In addition, 11 individuals completed requests to address the Board indicating support for the proposed amendments, however, these individuals were expressing their support only and did not wish to speak with the Board directly.

R7-2-408

Written comment was received from one individual. In that letter, the individual raises the issue of consistency among school boards in making ESY eligibility determinations and indicates that there are no implementation measures provided in the proposed rule beyond those broadly set forth in the statute.

There was no oral comment provided during the oral portion of the public hearing.

R7-2-1401 through R7-2-1408

There was no comment received, oral or written, related to the new rules.

**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:**

None.

**13. Was this rule previously adopted as an emergency rule?**

No.

**14. The full text of the rule follows:**

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**TITLE 7. EDUCATION**

**CHAPTER 2. STATE BOARD OF EDUCATION**

**ARTICLE 4. SPECIAL EDUCATION**

Sections

- R7-2-405. Due Process Standards Relating to Special Education  
R7-2-408. Extended School Year Programs for Children with Disabilities

**ARTICLE 14. SPECIAL EDUCATION**

Sections

- R7-2-1401. Definitions  
R7-2-1402. Charter School Committee  
R7-2-1403. Application  
R7-2-1404. Contract  
R7-2-1405. Execution of a Contract  
R7-2-1406. Amendments to a Contract  
R7-2-1407. Revocation of a Contract  
R7-2-1408. Renewal of Contract

**ARTICLE 4. SPECIAL EDUCATION**

**R7-2-405. Due Process Standards Relating to Special Education**

**A. Definitions.** The following definitions are applicable to this rule:

1. “Impartial hearing officer” or “hearing officer” means a person or tribunal assigned to preside at a due process hearing whose duty it is to assure that proper procedures are followed and that rights of the parties are protected.
2. “Parent” has the meaning found in Title 15, Chapter 7, Article 4, and includes a surrogate parent. Appointment of a surrogate parent shall be made only by a court of competent jurisdiction.
3. “Public agency” means the school district, charter school or state or county agency responsible for providing educational service to a child.
4. “State Education Agency” (“SEA”) means the Department of Education, Exceptional Student Services Section.

**B.** The following due process procedures specified in this rule apply to all public agencies dealing with the identification, evaluation, and special education placement of and the provision of a free appropriate public education (“FAPE”) for of ~~handicapped~~ children with disabilities.

**C.** The SEA ~~Each LEA and SSI~~ shall establish ~~policies and~~ procedures concerning:

- a1. Impartial due process hearings; and
- b2. Confidentiality and access to student records, such as, removal of evidence when child has been misclassified or misplaced.
2. ~~The term “impartial hearing officer” means a person or tribunal or persons assigned to preside at a due process hearing and whose duty it is to assure that proper procedures are followed and that rights of the parties are protected. In all cases any action taken must comply with current A.R.S. §§ 15-766 and 15-767 and federal court decisions such as the Guadalupe Decision.~~

**D.** An impartial hearing officer shall be:

- a1. Unbiased – not prejudiced for or against any party in the hearing;
- b2. Disinterested – not having any personal or professional interest which would conflict with objectivity in the hearing;
- e3. Independent – may not be an officer, employee, or agent of a the public agency LEA, SSI, or of any other public agency involved in the education or care of the child or the SEA. A person who otherwise qualifies to conduct a hearing is not an employee of the public agency or the SEA solely because the person is paid by the public agency to serve as a hearing officer;
- d4. Trained and evaluated by the agency SEA as to the state and federal laws pertaining to the identification, evaluation, placement of; and the provision of FAPE for education of handicapped children with disabilities.

**3E.** Hearing officer qualifications and training. ~~Each LEA and SSI shall maintain a list of persons who serve as hearing officers. The list must include a statement of qualifications of those persons.~~

1. All hearing officers shall participate in all required training and evaluation conducted by the SEA as to the state and federal laws pertaining to the identification, evaluation, placement of and the provision of FAPE for children with disabilities.
2. All hearing officers shall demonstrate competency by achieving a minimum score of 80% on a criterion-referenced test selected by the SEA.
3. A hearing officer shall be an attorney licensed to practice law in the United States, or an attorney on inactive status whose withdrawal from active practice is not premised upon adverse disciplinary action from any state or federal bar

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association. A hearing officer shall not have represented a parent in a special education matter during the preceding calendar year and shall not have represented a school district in any matter during the preceding calendar year.

4. An individual shall be removed from the list of eligible hearing officers if, at any time, the individual no longer meets the requirements specified in subsections (D)(1) through (D)(4) and subsections (E)(1) through (E)(3).

**F.** Selection of hearing officers.

1. The SEA shall prepare and maintain a list of individuals who meet the qualifications specified in paragraph E. to serve as hearing officers.
2. Three hearing officers shall be selected randomly by the SEA and shall be screened to determine availability and possible bias. Once the SEA has selected 3 hearing officers who are available and show no evidence of bias, the 3 names shall be provided to the public agency and the parent. The public agency and the parent will each have the opportunity to strike 1 name from the list provided. The remaining individual shall be named as the hearing officer unless either party objects for cause and provides such reason in writing to the SEA. Objections for cause shall require specific evidence that the individual does not meet the criteria specified in subsection (D) and (E)(1) through (3). The SEA shall review the evidence submitted and determine the qualifications of the individual. If the SEA determines that the individual is not qualified to serve as the hearing officer, the SEA shall repeat the process and select 3 additional hearing officers to be provided to the parties. The selection process as outlined in this subsection.
4. Written notice must be given to the parents of a handicapped child a reasonable time before the agency proposes or refuses to initiate or change the identification, evaluation, educational placement of the child, or the provision of a free appropriate public education to the child. The notice shall contain:
  - a. A full explanation of all procedural safeguards;
  - b. A description of the action proposed or refused by the agency, an explanation of options the agency considered and the reasons why those options were rejected;
  - c. A description of each evaluation procedure, test, record or report the agency used as a basis for the proposal or refusal;
  - d. A description of any other factors which are relevant to the agency's proposal or refusal.
5. The term "days" in this rule means calendar days.
6. The "placement plan" means that program by which decisions concerning the educational placement of the child in a special education environment are formulated.
7. The term "consent" means that:
  - a. The parent has been fully informed of all information relevant to the activity for which consent is sought, in his or her native language, or other mode of communication;
  - b. The parent understands and agrees in writing to the carrying out of the activity for which his or her consent is sought, and the consent describes that activity and lists the records, if any, which will be released, and to whom; and
  - c. The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked at any time.
8. The term "parent" means parent, guardian, or surrogate parent. Appointments of surrogate parents shall be made only by the court system.
9. A parent or LEA or SSI may initiate a due process hearing on any of the matters listed below:
  - a. Evaluation and related procedures;
  - b. Eligibility;
  - c. Written notice as defined in subsections (D) above;
  - d. Proposal to initiate or change the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education to the child;
  - e. Refusal to initiate or change the identification, evaluation, or educational placement of the child or the provision of a free appropriate public education to the child;
  - f. Written consent of the parent or guardian.

**G10.** A parent shall submit a written request for a due process hearing must be submitted in writing to the public agency LEA or SSI. The SEA shall provide a model form that a parent may use in requesting a due process hearing. Upon receipt of this a written request, there shall be no change in the educational placement of the child until the hearing officer renders his a decision, unless the public agency and parent agree to this. If a parent requests a due process hearing, the public agency shall advise the parents of any free or low-cost legal services available. All correspondence to the parent shall be provided in English and the primary language of the home. If the written request involves an application for initial admission, the child, with the consent of the parent, shall be placed in a program for which the child is eligible until the completion of all proceedings. Hearing procedures are governed by federal regulations, 45 C.F.R. § 121a.500 et seq.

11. The LEA or SSI may initiate a request for a due process hearing if the parent refuses to accept evaluation results or recommendations for special education placement.
12. If a parent requests a due process hearing, the LEA or SSI shall advise the parents of any free or low-cost legal services available.

13. ~~Prior to the actual hearing, notification to the parent will be in compliance with A.R.S. § 41-1009(B).~~  
14. ~~All written correspondence shall be provided in English and the primary language of the home.~~

**H45. An** ~~The~~ impartial due process hearing shall be conducted in accordance with the following procedures:

1. The hearing officer shall hold a preconference meeting to ensure that all matters are clearly defined, to establish the proceedings that will be used for the hearing, and to set the time and dates for the hearing.
2. ~~The hearing officer shall preside at the hearing and shall conduct the proceedings in a fair and impartial manner to the end that all parties involved have an opportunity to:~~
  - ia. ~~Present their evidence and confront, cross-examine and compel the attendance of witnesses;~~
  - ib. Object to Prohibit the introduction of any evidence at the hearing that has not been disclosed to all parties that party at least five 5 business days before the hearing;
  - ic. ~~Produce outside expert witnesses;~~
  - d. ~~Be represented by legal counsel or and by individuals with special knowledge or training with respect to the problems of handicapped children with disabilities.~~
3. ~~The Parents parent~~ involved in ~~the~~ hearings ~~shall must~~ be given the right to:
  - ia. ~~Have the child who is the subject of the hearing present;~~
  - ib. Have Open the hearing conducted in to the public;
  - c. Have In cases where there are language differences, an interpreter shall be provided by the public agency.
4. ~~The hearing officer shall review all relevant facts concerning the identification, evaluation, the educational placement and the provision of FAPE. This shall include any independent Independent Education evaluation Evaluation by an appropriate professional secured by the parent.~~
  - ia. ~~The hearing officer shall determine whether the public agency LEA or SSI has met all requirements of federal and state law, rules and regulations in developing the education placement plan.~~
  - ib. ~~The hearing officer shall render findings of fact and a decision, which shall be is binding on to all parties; unless appealed pursuant to this rule, except that in all cases any action taken must comply with current Arizona Revised Statutes and federal court decisions such as the Guadalupe Decision as to whether:~~
    - (1)i. ~~The evaluation procedures utilized in determining the child's needs have been appropriate in nature and degree;~~
    - (2)ii. ~~The diagnostic profile of the child on which the placement was based is substantially verified;~~
    - (3)iii. ~~The child's rights have been fully observed;~~
    - iv. The placement has been determined to be appropriate to the needs of the child;
    - (4)v. ~~The placement of the child in the special education program is with the written consent of the parent or guardian.~~
      - iii. If the parent's primary language is other than English, the hearing officer shall appoint an interpreter.
465. ~~The hearing officer's findings of fact and decision shall be in writing and shall be provided sent to the parents, the public education agency, the SEA and their respective representatives, and to the State Director of Special Education. The parent may choose to receive an electronic verbatim record of the hearing and electronic findings of fact and decision relative to the hearing in addition to the written findings of fact and decision. The hearing officer's findings of fact and Such decision shall be delivered by certified mail or by hand within 45 calendar days after the receipt of the request for the hearing. The State Director of Special Education, after deleting any personally identifiable information, shall transmit the hearing officer's written decision, including the findings of fact and conclusions of law, to the Special Education Advisory Committee of the State Board of Education and make such written decision, findings, and conclusions available to the public. The notification of the hearing officer's decision shall include a statement that either party may appeal the decision to the Office of Administrative Hearings Division of Special Education and that such appeal must be filed within 35 calendar days after receipt of the decision. An extension of time for filing the appeal may be granted by the Division of Special Education for cause.~~
6. The SEA, after deleting any personally identifiable information, shall make such written findings of fact and decision available to the public.

**I. Expedited hearing.**

1. An expedited hearing may be requested concerning long term suspension or expulsion:
  - a. By the parent if the parent disagrees with the determination that the child's behavior was not a manifestation of the child's disability; or
  - b. By the parent if the parent disagrees with any decision regarding placement; or
  - c. By the public agency if the public agency maintains that it is dangerous for the child to be in the current placement during the pendency of the due process proceedings.
2. Hearing officers for an expedited hearing shall be assigned by the SEA after review to determine that the hearing officer meets the standards specified in subsection (D)(1) through (D)(4). The strike provisions specified in subsection (F) are not applicable.
3. The expedited hearing shall be conducted and the findings of fact and decision shall be issued within 10 calendar days.

17. A written or electronic verbatim record of the impartial due process hearing shall be provided and on file in the LEA or SSI and made available for review to the parent, guardian, or surrogate upon the request of any of the involved parties.
18. All written correspondence, including the copy of the hearing officer's decision mentioned above, shall be provided in English and the primary language of the home.
19. The decision of the hearing officer shall be binding on the parent, guardian or surrogate, and on the LEA or SSI, its employees and agents, subject only to administrative or judicial review.
20. During the pendency of any administrative or judicial proceedings regarding a complaint, unless the agency and the parents of the child agree otherwise, the child involved in the complaint must remain in his or her present educational placement. If the complaint involves an application for initial admission to public school, the child, with the consent of his parents, must be placed in the public school program until the completion of all the proceedings.

**121. Administrative appeal.**

1. A The final administrative hearing appeal may be obtained through the Office of Administrative Hearings. Requests for appeal shall be submitted in writing through the SEA, Division of Special Education, Arizona Department of Education, which shall conduct an impartial review of the hearing.
  - a. Such an appeal shall be accepted only if it is initiated within 35 days after the decision of the hearing officer has been received by the parties party appealing. An extension of time for filing the appeal may be granted by the Division of Special Education for cause. Appeals must be forwarded to the Division of Special Education, Arizona Department of Education, 1535 West Jefferson, Phoenix, Arizona 85007.
  - b. The official conducting the review shall:
    - i. Examine the entire hearing record;
    - ii. Ensure that the procedures at the hearing were consistent with the requirements of due process;
    - iii. Seek additional evidence if necessary. If a hearing is held to receive additional evidence, the procedures provided for in subsection (O) above shall be applied;
    - iv. Afford the parties an opportunity for oral or written argument, or both, at the discretion of the reviewing official;
    - v. Make findings of fact and a an independent decision on completion of the review;
    - vi. Give a copy of the written findings of fact and the decision to the parties.
  - e. The process as defined in subsections (Q) through (S) above shall be implemented in response to the administrative hearing appeal to the Division of Special Education.
2. The findings of fact and final decision of the administrative law judge hearing appeals officer shall be delivered by certified mail or by hand mailed to all parties to the hearing within 30 calendar days of the receipt of the a request for appeal a review. The State Director of Special Education SEA, after deleting any personally identifiable information, shall transmit the hearing officer's written decision, including the findings of fact and conclusions of law to the Special Education Advisory Committee of the State Board of Education and make such written findings of fact and decision, findings, and conclusions available to the public.
3. The findings of fact and decision of the administrative law judge shall be final at the administrative level. The notification of the findings of fact and decision shall contain notice to the parties that they have a right to judicial review.
22. Any party aggrieved by the findings and decisions made in a hearing or in an appeal review has the right to judicial review. The decision of the administrative hearing appeals officer shall be final at the administrative level.
23. An impartial due process hearing officer or an administrative hearing appeals officer may grant specific time extensions at the request of either party.

**R7-2-408. Extended School Year Programs for Children with Disabilities**

**A.** "Extended school year" shall be as defined in A.R.S. §15-881.

**B.** Eligibility. Eligibility shall be determined by the Individualized Education Program (IEP) Team. Criteria for determining eligibility in an extended school year program shall be:

1. Regression-recoupment factors;
2. Critical learning stages;
3. Least restrictive environment considerations;
4. Teacher and parent interviews and recommendations;
5. Data-based observations of the pupil;
6. Considerations of the pupils' previous history; and
7. Parental skills and abilities.

**C.** The extended school year program is not compulsory and is not required for all students with a disability.

**D.** Factors that are inappropriate for consideration. Eligibility for participation shall not be based on need or desire for any of the following:

1. A day care or respite care service for students with a disability;
2. A program to maximize the academic potential of a student with a disability; and
3. A summer recreation program for students with a disability.

**ARTICLE 14. CHARTER SCHOOLS**

**R7-2-1401. Definitions**

For the purpose of this article the following definitions shall apply:

1. “Applicant” means a person, public body or private organization that has applied to the State Board of Education to establish a charter school under the provisions of A.R.S. §15-181 et seq.
2. “Background check” means a report received related to an applicant and the identified governing board members regarding the status of each persons credit and credit history, and any criminal activity identified by the law enforcement agency processing the applicant and governing board member’s fingerprints.
3. “Committee” means the Charter School Committee established pursuant to this Article.
4. “Charter School” means a school chartered pursuant to A.R.S. §15-181 et seq. and sponsored by the Board of Education.
5. “Contract” means a document outlining the terms and conditions of an agreement between the parties.
6. “Governing board” means the governing body responsible for the policy and operational decisions of the charter school formed pursuant to A.R.S. 15-183 et seq.

**R7-2-1402. Charter School Committee**

- A.** The Board of Education shall establish a Charter School Committee who shall have the responsibility of reviewing applications and preparing a recommendation for the Board of Education’s consideration.
- B.** The Board of Education shall appoint the members of the committee. The committee shall consist of 7 members as follows:
  1. An individual knowledgeable in building construction or renovation;
  2. An individual knowledgeable in finance and accounting and in generally accepted accounting practices;
  3. An individual representing a city in this state who is knowledgeable about zoning and operating permit requirements;
  4. An individual knowledgeable about elementary and high school curriculum and the development and evaluation of curriculum;
  5. An individual knowledgeable about assessments and the administration of assessments;
  6. An individual representing the Board of Education;
  7. A current operator of a charter school sponsored by the Board of Education.
- C.** Terms of each member of the committee shall be for 3 years. Members may be appointed for subsequent terms upon approval by the Board of Education.

**R7-2-1403. Application**

- A.** Interested parties or individuals may submit an application for approval by the Board of Education pursuant to A.R.S. § 15-181 et seq. Applications shall be on forms approved by the Board of Education.
- B.** Applications shall be evaluated by the committee. The committee shall prepare a recommendation for the Board of Education’s consideration. The recommendation shall be based upon a review of all aspects of the application including, for example, completeness of the application, the viability of the school including the financial viability, the projected funding sources, the number and population to be served, including school-aged students who are deemed to be unserved or underserved.
  1. The committee may request additional information as needed to assist in evaluating the application and preparing a recommendation for the Board of Education’s consideration.
  2. Recommendations of the committee to the Board of Education may include approval of the application, denial of the application or deferral of the application pending further information or clarification.
  3. Applicants shall be notified in writing at least 10 days prior to the Board of Education meeting of the date, time and place of the meeting at which the Board of Education shall consider the charter school committee’s recommendation related to the application.
  4. Action by the Board of Education may include approval of the application, denial of the application or deferral of the application pending further information or clarification. The Board of Education shall state the reasons for denial or deferral of the application.
  5. Applicants shall be notified in writing of the decision of the Board of Education. Written notification that the Board of Education has denied an application shall include reasons for denial. Written notification shall be provided to applicants within 15 days following a decision of the Board of Education.
- C.** An approved application does not constitute an approved contract and approval of an application shall not be construed to imply that a contract will be issued.

**R7-2-1404. Contract**

- A.** A contract shall be on forms approved by the Board of Education.
- B.** At least once per year, the Board of Education shall consider issuance of a contract to approved applicants.
- C.** Upon review and recommendation from the committee, the Board of Education may approve the issuance of a contract, approve the issuance of a contract pending receipt of specific information or completion of requirements, defer the issu-

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ance of a contract or deny the issuance of a contract. The Board of Education shall state the reasons for denial or deferral of issuance of a contract.

- D.** Applicants shall be notified in writing at least 10 days prior to the Board of Education meeting of the date, time and place of the meeting at which the Board of Education shall consider the charter school committee's recommendation related to issuance of a charter.
- E.** Applicants shall be notified in writing of the decision of the Board of Education. Written notification that the Board of Education has denied issuance of a contract shall include reasons for denial. Written notification shall be provided to applicants within 15 days following a decision of the Board of Education.

**R7-2-1405. Execution of a Contract**

- A.** Contracts shall be signed by the applicant, or a person with signatory authority for the applicant within 6 months from the date of approval of issuance of the contract by the Board of Education, unless an extension of time is granted by the Board of Education. If issuance of a contract was approved by the Board of Education pending receipt of additional information, the contract shall be signed by the applicant or a person with signatory authority for the applicant within 6 months of receipt of the additional information by the Board of Education.
- B.** Contracts which have not been signed pursuant to this rule shall require reapplication and approval during a subsequent application cycle.
- C.** The following items shall be submitted to the Board of Education prior to signing of a contract:
  - 1. Background check, including fingerprint clearance for all authorized signatories and all governing board members approved;
  - 2. Certificate of Occupancy or a written exemption from the local municipality or county that the certificate is not required for operation of a public school. A set of architectural plans approved by the local planning and zoning office may be submitted in lieu of a certificate of occupancy for the purposes of this paragraph for construction of new buildings or renovation of existing buildings. A certificate of occupancy will be required to be submitted prior to opening of the school.
  - 3. A lease agreement or proof of building availability;
  - 4. Executed statement of assurances;
  - 5. Written verification that the facility meets the requirements established by the State and local fire marshal;
  - 6. Written verification from an insurance company authorized to do business in the State of Arizona that arrangements have been finalized to provide the required amount of insurance;
  - 7. Proof of local County Health Department approval.

**R7-2-1406. Amendments to a Contract**

- A.** Any changes to the contract shall be submitted on forms approved the Board of Education.
- B.** All amendments to the contract shall be accompanied by a signed governing board resolution or an official copy of the minutes of a governing board meeting that the amendment was approved by the governing board.
- C.** No amendment shall be effective or implemented prior to being approved by the governing board, submitted to and approved by the Board of Education.
- D.** Amendments requesting a change in the membership of the governing board shall, in addition to the requirements specified in subsection B., include a completed fingerprint application and a signed affidavit authorizing a background check.
- E.** If an extension of time was granted pursuant to R7-2-1404(A), amendments to update the application shall be submitted at the time the contract is executed.

**R7-2-1407. Revocation of a Contract**

- A.** The Board of Education may issue a Notice of Intent to Revoke a Contract and Notice of Hearing to any contract holder who is alleged to be in violation of the contract and the governing board.
- B.** Within 10 days of receipt of a Notice of Intent to Revoke a Contract and Notice of Hearing, the governing board shall:
  - 1. Notify the parents or guardians of the students enrolled in the charter school that a Notice of Intent to Revoke a Contract and Notice of Hearing has been received;
  - 2. Hold a public meeting to inform the public and discuss the specific charges outlined in the Notice of Intent to Revoke a Contract;
  - 3. Provide the Board of Education with copies of all correspondence and communications used to comply with subsection (1) above and minutes of the meeting as evidence of compliance with subsection (2) above;
  - 4. Provide the Board of Education with the names and mailing addresses of parents or guardians of all students enrolled in the charter school at the time the Notice of Intent to Revoke a Contract and Notice of Hearing was received.
- C.** Hearings held pursuant to a Notice of Intent to Revoke a Contract and Notice of Hearing shall be held in accordance with R7-2-701 through R7-2-709.

**R7-2-1408. Renewal of Contract**

When considering renewal of a contract, the following, as a minimum, shall be provided to the Board of Education:

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1. Assessment results, including scores of the norm-referenced achievement test, the scores of the Arizona's Instrument to Measure Standards (AIMS), and scores of any school assessment programs;
2. Results of any audits conducted, including independent audits, Uniform System of Financial Records or Uniform System of Financial Records for Charter Schools compliance audits or any audits conducted by the Auditor General's Office;
3. Enrollment reports that include enrollment figures, funding sources, budget updates and financial reporting of expenditures;
4. All complaints received;
5. Copies of Board of Education minutes where consideration and action was taken on all issues related to the charter school;
6. Any other reports, information or materials pertinent to the charter school.

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**TITLE 18. ENVIRONMENTAL QUALITY**

**CHAPTER 2. DEPARTMENT OF ENVIRONMENTAL QUALITY**

**AIR POLLUTION CONTROL**

**PREAMBLE**

1. **Sections Affected**

	<b><u>Rulemaking Action</u></b>
R18-2-102	Amend
R18-2-210	Amend
R18-2-333	Amend
R18-2-901	Amend
R18-2-1101	Amend
Appendix 2	Amend
2. **The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**

Authorizing and implementing statutes: A.R.S. §§ 49-104(A)(11), 49-404(A) and 49-425(A).
3. **The effective date of the rules:**

August 12, 1999.
4. **A list of all previous notices appearing in the register addressing the final rule:**

Notice of Docket Opening: 5 A.A.R. 953, April 2, 1999.  
Notice of Proposed Rulemaking: 5 A.A.R. 987, April 9, 1999.
5. **The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Name: Mark Lewandowski or Martha Seaman, Rule Development Section

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

Telephone: (602) 207-2230 or (602) 207-2222 (Any extension may be reached in-state by dialing 1-800-234-5677, and asking for that extension.)

Fax: (602) 207-2251
6. **An explanation of the rule, including the agency's reasons for initiating the rule:**

The Arizona Department of Environmental Quality (ADEQ) has updated its incorporations by reference of the following federal regulations: New Source Performance Standards (NSPS); National Emission Standards for Hazardous Air Pollutants (NESHAP); and Acid Rain. In addition, ADEQ has updated and clarified the current general incorporation by reference in R18-2-102(3). With 1 exception, the federal regulations are incorporated as of July 1, 1998.

**NSPS/NESHAP regulations.** Current regulations incorporated by reference from 40 CFR Parts 60, 61, and 63 have been updated from July 1, 1997 to July 1, 1998. One subpart previously incorporated, the NSPS for municipal solid waste landfills at R18-2-901(73), is updated to an adoption date after July 1, 1998. A revision to the subpart was published by EPA in the June 16, 1998 Federal Register, but not effective until August 17, 1998. In that rulemaking, EPA added a new emission calculation for landfills located in arid areas (areas with a 30 year annual average precipitation

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of less than 25 inches). ADEQ has incorporated the revision from this later date because of the revision's potential importance in Arizona.

As explained further below, ADEQ has also incorporated new subparts in Part 63, adopted as of July 1, 1998. Finally, corrections to several of the federal subpart headings in R18-2-1101(B) were necessary.

**Acid Rain.** Current regulations incorporated by reference from 40 CFR Part 72, 74, 75 and 76 have been updated from July 1, 1997 to July 1, 1998 in R18-2-333, and have been made more concise by combining former subsections (A) and (B) into 1 subsection. ADEQ is obligated under state and federal law to incorporate federal acid rain requirements in the acid rain permits that it issues. (R18-2-306(A)(2); 40 CFR 70.6(a)(1))

ADEQ's intention in updating these incorporations by reference is to continue to obtain delegated authority from EPA to implement and enforce the NSPS, NESHAP and acid rain programs in Arizona.

**Miscellaneous Incorporations by Reference.** A general incorporation by reference at R18-2-102(3) formerly incorporated by reference "All parts of the CFR referenced in this Chapter." Not all parts of the CFR referenced in Chapter 2, however, actually needed to be incorporated by reference. ADEQ examined Chapter 2 and found that the following references to 40 CFR needed incorporation by reference, were not incorporated elsewhere and had been covered by R18-2-102(3):

40 CFR 50, Appendices A through K; see R18-2-101(80), (91), and (108); R18-2-201(C) and (D); R18-2-203(C)

40 CFR 51, Appendix S, Section IV; see R18-2-407(E)

40 CFR 52, Appendices D and E; see R18-2-101(91), R18-2-311(A), R18-2-715.01(K)

40 CFR 58, all Appendices, see R18-2-215(B) and (C), R18-2-407(G)

40 CFR 50, see R18-2-216(A) and R18-2-715.02(E)

40 CFR 58; see R18-2-715.02(E)

ADEQ has relocated the incorporations by reference for these appendices and other sections of federal law to Appendix 2, and deleted the former general incorporation by reference in R18-2-102(3). This complied with discussion accompanying the Governor's Regulatory Review Council's (GRRC) approval of ADEQ's previous NSPS rulemaking on December 2, 1997. This also consolidates test methods and protocols incorporated by reference in 1 location.

R18-2-210 contains an incorporation by reference of a federal regulation listing the Arizona nonattainment areas. This incorporation by reference has been updated in this rulemaking, and will be updated, when necessary, in future rulemakings updating incorporations by reference.

A description of the new incorporations by reference follows:

NSPS/NESHAP

**Part 63, Subpart S—National Emission Standards for Hazardous Air Pollutants from the Pulp and Paper Industry.** [Added at 63 FR 18616; April 15, 1998] This EPA rule promulgated effluent limitations guidelines and standards under the Clean Water Act for a portion of the pulp, paper, and paperboard industry, and national emission standards for hazardous air pollutants (NESHAP) under the Clean Air Act (CAA) as amended in 1990 for the pulp and paper production source category. ADEQ is only incorporating the NESHAP portion in this rulemaking. The NESHAP require existing and new major sources within the pulp and paper production source category to control emissions using the maximum achievable control technology (MACT) to control hazardous air pollutants (HAP). The HAP emitted by facilities covered by this rule include such compounds as methanol, chlorinated compounds, formaldehyde, benzene, and xylene.

**Part 63, Subpart LL - National Emission Standards for Hazardous Air Pollutants for Primary Aluminum Reduction Plants.** [Added at 62 FR 52407; October 7, 1997] This action promulgated national emission standards for each new or existing potline, paste production plant, and anode bake furnace associated with a primary aluminum reduction plant, and for each new pitch storage tank associated with a primary aluminum production plant. In addition, the new source performance standard for primary aluminum plants was amended and most of the requirements incorporated in the final national emission standards. The major hazardous air pollutants (HAPs) emitted by the facilities covered by this rule include hydrogen fluoride (HF) and polycyclic organic matter (POM). Polycyclic aromatic hydrocarbons (PAHs) are included in the chemical group POM.

**Part 63, Subpart EEE - National Emission Standards for Hazardous Air Pollutants From Hazardous Waste Combustors.** [Added at 63 FR 33782; June 19, 1998] This final EPA rule adopted new regulations under 40 CFR 63, and amended regulations under 40 CFR 261 and 270 to implement air emission standards for hazardous waste com-

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bustors, including cement kilns and lightweight aggregate kilns that burn hazardous waste. The rule adopts a conditional exclusion for certain fuels produced from hazardous waste that are comparable to fossil fuels. It also establishes permit modification procedures for technology changes that are necessary for a facility to achieve compliance with MACT standards, specifies notification requirements for sources intending to comply with the new rule, and allows for extensions to the compliance period. ADEQ is only incorporating the NESHAP portion in this rule-making. A 2nd EPA rulemaking, with detailed emission standards, is to follow.

**Relationship to other rules.** ADEQ notes that it is adopting a 2nd rule that also amends R18-2-901 in a manner consistent with this rule. The Notice of Proposed Rulemaking of the 2nd rule, dealing exclusively with the NSPS and federal Emission Guidelines for medical waste incinerators, was published in the April 16, 1999, issue of the *Register* (5 A.A.R. 1097, April 16, 1999.)

**7. A reference to any study that the agency relied on in its evaluation of or justification for the final 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.

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

Not applicable.

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

**IDENTIFICATION OF RULEMAKING**

NSPS/NESHAP/Acid Rain 1998: A.A.C. Title 18, Chapter 2, Articles 1, 2, 3, 9 and 11; Appendix 2, sections R18-2-102, R18-2-210, R18-2-333, R18-2-901, R18-2-1101, Appendix 2

**EXECUTIVE SUMMARY**

**Costs**

There are no additional costs to the regulated community when a state agency incorporates an already effective federal standard verbatim. The costs of compliance have already occurred, and were considered when the federal regulation was proposed and adopted. These rules impose no additional costs on the regulated community, small businesses, political subdivisions, or members of the public.

Costs to ADEQ are those that may accrue for implementation and enforcement of the new standards. Although there may be some small incremental costs due to this rulemaking, ADEQ does not intend to hire any additional employees to implement or enforce these rules.

**Benefits**

Benefits accrue to the regulated community when a state agency incorporates a federal regulation in order to become the primary implementer of the regulation, because the state agency is closer to those being regulated and therefore is generally easier to reach and to work with to resolve differences. ADEQ, in addition to being closer to regulated sources, has a Small Business Assistance Program for air quality issues in its Office of Compliance Assistance, which helps in disseminating information and resolving difficulties, compared with the U.S. EPA, whose regional office is in San Francisco. Local implementation also reduces travel and communication costs.

Health benefits accrue to the general public whenever enforcement of environmental laws takes place. Adverse health effects from air pollution result in a number of economic and social consequences, including:

1. Medical costs. These include personal out-of-pocket expenses of the affected individual (or family), plus costs paid by insurance or Medicare, for example.
2. Work loss. This includes lost personal income, plus lost productivity whether the individual is compensated for the time or not. For example, some individuals may perceive no income loss because they receive sick pay, but sick pay is a cost of business and reflects lost productivity.
3. Increased costs for chores and caregiving. These include special caregiving and services that are not reflected in medical costs. These costs may occur because some health effects reduce the affected individual's ability to undertake some or all normal chores, and he or she may require caregiving.
4. Other social and economic costs. These include restrictions on or reduced enjoyment of leisure activities, discomfort or inconvenience, pain and suffering, anxiety about the future, and concern and inconvenience to family members and others.

**Conclusion**

In conclusion, the incremental costs associated with this rule are generally low, and apply solely to ADEQ, while the air quality benefits are generally high. In addition, there are benefits to industry from being regulated by a geographically and politically nearer government entity. There are no adverse economic impacts on political subdivisions. There are no adverse economic impacts on private businesses, their revenues or expenditures. The fact that no new employment is expected to occur has been discussed above, in the context of the impact on state agencies. There are no adverse economic impacts on small businesses, although some regulatory benefits will accrue to them. There are no economic impacts for consumers; benefits to private persons as members of the general public are discussed above in terms of better enforcement. There will be no direct impact on state revenues. There are no other, less costly alternatives for achieving the goals of this rulemaking. The rules are no less stringent and no more stringent than the federal regulations on each subject.

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

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

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

1. Implement rules necessary for EPA delegation of Clean Air Act § 111 (NSPS) program to Arizona.
2. Implement rules necessary for EPA § 112(l) program delegation to Arizona (NESHAP).
3. Implement rules necessary for acid rain program delegation to ADEQ.

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

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

Periods changed to semicolons after certain items in Appendix 2. The word “and” added to item 3 and item 10 in Appendix 2. No other changes made.

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

Not applicable. No comments were received.

**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.

**13. Incorporations by reference and their locations in the rules:**

<u>New Incorporations by reference (subparts or larger)</u>	<u>Location</u>
40 CFR 63, subparts S, LL, EEE	R18-2-1101(B)
<u>Incorporations by reference updated from 7/1/97 to 7/1/98</u>	
<u>(may include new sections)</u>	
	<u>Location</u>
40 CFR 72, 74, 75 and 76	R18-2-333(A)
40 CFR 60, listed subparts	R18-2-901(A)

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40 CFR 61, listed subparts	R18-2-1101(A)
40 CFR 63, listed subparts	R18-2-1101(B)
Currently listed appendices to 40 CFR 51, 60, 61, 63, 75	Title 18, Chapter 2, Appendix 2

Incorporations by reference updated from 7/1/95 to 7/1/98 and relocated. (may include new sections)

<u>Incorporation by reference</u>	<u>Location</u>
40 CFR 50	Appendix 2
40 CFR 50, Appendices A through K	Appendix 2
40 CFR 51, Appendix S, Section IV	Appendix 2
40 CFR 51, Appendix W	Appendix 2
40 CFR 52, Appendices D and E	Appendix 2
40 CFR 58	Appendix 2
40 CFR 58, all appendices	Appendix 2
40 CFR 81.303	R18-2-210 (not relocated)

**14. Was this rule previously adopted as an emergency rule?**  
No.

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

**TITLE 18. ENVIRONMENTAL QUALITY**

**CHAPTER 2. DEPARTMENT OF ENVIRONMENTAL QUALITY  
AIR POLLUTION CONTROL**

**ARTICLE 1. GENERAL**

Sections

R18-2-102. Incorporated Materials

**ARTICLE 2. AMBIENT AIR QUALITY STANDARDS; AREA DESIGNATIONS; CLASSIFICATIONS**

Sections

R18-2-210. Attainment, Nonattainment, and Unclassifiable Area Designations

**ARTICLE 3. PERMITS AND PERMIT REVISIONS**

Sections

R18-2-333. Acid Rain

**ARTICLE 9. NEW SOURCE PERFORMANCE STANDARDS**

Sections

R18-2-901. Standards of Performance for New Stationary Sources

**ARTICLE 11. FEDERAL HAZARDOUS AIR POLLUTANTS**

Sections

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

Sections

APPENDIX 2. TEST METHODS AND PROTOCOLS

**ARTICLE 1. GENERAL**

**R18-2-102. Incorporated Materials**

The following documents are incorporated by reference and are on file with the Office of the Secretary of State and with the Department:

1. The Department's "Arizona Testing Manual for Air Pollutant Emissions," amended as of March 1992 (and no future editions).

2. All ASTM test methods referenced in this Chapter as of the year specified in the reference (and no future amendments). They are available from the American Society for Testing and Materials, 1916 Race St., Philadelphia, PA 19103-1187.
3. ~~All parts of the CFR referenced in this Chapter. They are published in Title 40 of the Code of Federal Regulations, amended as of July 1, 1995 (and no future amendments), except as otherwise specifically provided. They are available from the U.S. Government Printing Office, Superintendent of Documents, Mail Stop SSOP, Washington D.C. 20402-9328.~~
43. The U.S. Government Printing Office's "Standard Industrial Classification Manual, 1987" (and no future editions).

**ARTICLE 2. AMBIENT AIR QUALITY STANDARDS; AREA DESIGNATIONS; CLASSIFICATIONS**

**R18-2-210. Attainment, Nonattainment, and Unclassifiable Area Designations**

Forty CFR 81.303 as amended as of July 1, ~~1995~~1998 (and no future editions) is incorporated by reference and is on file with the Department of Environmental Quality and the Office of Secretary of State.

**ARTICLE 3. PERMITS AND PERMIT REVISIONS**

**R18-2-333. Acid Rain**

- ~~A. The following subparts of 40 CFR 72, Permits Regulation, and all accompanying appendices, adopted as of July 1, 1997, (and no future amendments) are incorporated by reference. These standards are on file with the Office of the Secretary of State and the Department and shall be applied by the Department:~~
  - ~~1. Subpart A - Acid Rain Program General Provisions.~~
  - ~~2. Subpart B - Designated Representative.~~
  - ~~3. Subpart C - Acid Rain Applications.~~
  - ~~4. Subpart D - Acid Rain Compliance Plan and Compliance Options.~~
  - ~~5. Subpart E - Acid Rain Permit Contents.~~
  - ~~6. Subpart F - Federal Acid Rain Permit Issuance Procedures.~~
  - ~~7. Subpart G - Acid Rain Phase II Implementation.~~
  - ~~8. Subpart H - Permit Revisions.~~
  - ~~9. Subpart I - Compliance Certification.~~
- B.** 40 CFR ~~72, 74, 75~~ and 76 and all accompanying appendices, adopted as of July 1, ~~1997~~1998, (and no future amendments) are incorporated by reference. These standards are on file with the Office of the Secretary of State and the Department and shall be applied by the Department.
- CB.** When used in 40 CFR 72, 74, 75 or 76, "Permitting Authority" means the Arizona Department of Environmental Quality and "Administrator" means the Administrator of the United States Environmental Protection Agency.
- DC.** If the provisions or requirements of the regulations incorporated in this Section conflict with any of the remaining portions of this Title, the regulations incorporated in this Section shall apply and take precedence.

**ARTICLE 9. NEW SOURCE PERFORMANCE STANDARDS**

**R18-2-901. Standards of Performance for New Stationary Sources**

Except as provided in R18-2-902 through R18-2-905, the following subparts of 40 CFR 60, New Source Performance Standards (NSPS), and all accompanying appendices, adopted as of July 1, ~~1997~~1998, or the specific date provided below, and no future editions or amendments, are incorporated by reference. These standards are on file with the Office of the Secretary of State and the Department and shall be applied by the Department.

1. Subpart A - General Provisions.
2. Subpart D - Fossil-Fuel-Fired Steam Generators for Which Construction is Commenced After August 17, 1971.
3. Subpart Da - Electric Utility Steam Generating Units for Which Construction is Commenced After September 18, 1978.
4. Subpart Db - Industrial-Commercial-Institutional Steam Generating Units.
5. Subpart Dc - Small Industrial-Commercial-Institutional Steam Generating Units.
6. Subpart E - Incinerators.
7. Subpart Ea - Municipal Waste Combustors for which Construction is Commenced after December 20, 1989 and on or before September 20, 1994.
8. Subpart Eb - Municipal Waste Combustors for which Construction is Commenced after September 20, 1994.
9. Subpart Ec - Standards of Performance for Hospital/Medical/Infectious Waste Incinerators for Which Construction is Commenced After June 20, 1996, adopted September 15, 1997 (62 FR 48348).
10. Subpart F - Portland Cement Plants.
11. Subpart G - Nitric Acid Plants.
12. Subpart H - Sulfuric Acid Plants.
13. Subpart I - Hot Mix Asphalt Facilities.
14. Subpart J - Petroleum Refineries.

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15. Subpart K - Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After June 11, 1973, and Prior to May 19, 1978.
16. Subpart Ka - Storage Vessels for Petroleum Liquids for Which Construction, Reconstruction, or Modification Commenced After May 18, 1978, and Prior to July 23, 1984.
17. Subpart Kb - Volatile Organic Liquid Storage Vessels (Including Petroleum Liquid Storage Vessels) for Which Construction, Reconstruction, or Modification Commenced after July 23, 1984.
18. Subpart L - Secondary Lead Smelters.
19. Subpart M - Secondary Brass and Bronze Ingot Production Plants.
20. Subpart N - Primary Emissions from Basic Oxygen Process Furnaces for Which Construction is Commenced After June 11, 1973.
21. Subpart Na - Secondary Emissions from Basic Oxygen Process Steelmaking Facilities for Which Construction is Commenced After January 20, 1983.
22. Subpart O - Sewage Treatment Plants.
23. Subpart P - Primary Copper Smelters.
24. Subpart Q - Primary Zinc Smelters.
25. Subpart R - Primary Lead Smelters.
26. Subpart S - Primary Aluminum Reduction Plants.
27. Subpart T - Phosphate Fertilizer Industry: Wet-Process Phosphoric Acid Plants.
28. Subpart U - Phosphate Fertilizer Industry: Superphosphoric Acid Plants.
29. Subpart V - Phosphate Fertilizer Industry: Diammonium Phosphate Plants.
30. Subpart W - Phosphate Fertilizer Industry: Triple Superphosphate Plants.
31. Subpart X - Phosphate Fertilizer Industry: Granular Triple Superphosphate Storage Facilities.
32. Subpart Y - Coal Preparation Plants.
33. Subpart Z - Ferroalloy Production Facilities.
34. Subpart AA - Steel Plants: Electric Arc Furnaces Constructed After October 21, 1974, and On or Before August 17, 1983.
35. Subpart AAa - Steel Plants: Electric Arc Furnaces and Argon-Oxygen Decarburization Vessels Constructed After August 7, 1983.
36. Subpart BB - Kraft Pulp Mills.
37. Subpart CC - Glass Manufacturing Plants.
38. Subpart DD - Grain Elevators.
39. Subpart EE - Surface Coating of Metal Furniture.
40. Subpart GG - Stationary Gas Turbines.
41. Subpart HH - Lime Manufacturing Plants.
42. Subpart KK - Lead-Acid Battery Manufacturing Plants.
43. Subpart LL - Metallic Mineral Processing Plants.
44. Subpart MM - Automobile and Light Duty Truck Surface Coating Operations.
45. Subpart NN - Phosphate Rock Plants.
46. Subpart PP - Ammonium Sulfate Manufacture.
47. Subpart QQ - Graphic Arts Industry: Publication Rotogravure Printing.
48. Subpart RR - Pressure Sensitive Tape and Label Surface Coating Operations.
49. Subpart SS - Industrial Surface Coating: Large Appliances.
50. Subpart TT - Metal Coil Surface Coating.
51. Subpart UU - Asphalt Processing and Asphalt Roofing Manufacture.
52. Subpart VV - Equipment Leaks of VOC in the Synthetic Organic Chemicals Manufacturing Industry.
53. Subpart WW - Beverage Can Surface Coating Industry.
54. Subpart XX - Bulk Gasoline Terminals.
55. Subpart AAA - New Residential Wood Heaters.
56. Subpart BBB - Rubber Tire Manufacturing Industry.
57. Subpart DDD - Volatile Organic Compound (VOC) Emissions from the Polymer Manufacturing Industry.
58. Subpart FFF - Flexible Vinyl and Urethane Coating and Printing.
59. Subpart GGG - Equipment Leaks of VOC in Petroleum Refineries.
60. Subpart HHH - Synthetic Fiber Production Facilities.
61. Subpart III - Volatile Organic Compound (VOC) Emissions from the Synthetic Organic Chemical Manufacturing Industry (SOCMI) Air Oxidation Unit Processes.
62. Subpart JJJ - Petroleum Dry Cleaners.
63. Subpart KKK - Equipment Leaks of VOC from Onshore Natural Gas Processing Plants.
64. Subpart LLL - Onshore Natural Gas Processing: SO<sub>2</sub> Emissions.

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65. Subpart NNN - Volatile Organic Compound (VOC) Emissions From Synthetic Organic Chemical Manufacturing Industry (SOCMI) Distillation Operations.
66. Subpart OOO - Nonmetallic Mineral Processing Plants.
67. Subpart PPP - Wool Fiberglass Insulation Manufacturing Plants.
68. Subpart QQQ - VOC Emissions From Petroleum Refinery Wastewater Systems.
69. Subpart RRR - Volatile Organic Compound (VOC) Emissions From Synthetic Organic Chemical Manufacturing Industry (SOCMI) Reactor Processes.
70. Subpart SSS - Magnetic Tape Coating Facilities.
71. Subpart TTT - Industrial Surface Coating: Surface Coating of Plastic Parts for Business Machines.
72. Subpart UUU - Calciners and Dryers in Mineral Industries.
73. Subpart VVV - Polymeric Coating of Supporting Substrates Facilities.
74. Subpart WWW - Municipal Solid Waste Landfills. Incorporation includes amendments adopted as of August 17, 1998.

**ARTICLE 11. FEDERAL HAZARDOUS AIR POLLUTANTS**

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

- A.** Except as provided in R18-2-1102, the following subparts of 40 CFR 61, National Emission Standards for Hazardous Air Pollutants (NESHAPs), and all accompanying appendices, adopted as of July 1, ~~1997~~1998, and no future editions or amendments, are incorporated by reference. These standards are on file with the Office of the Secretary of State and the Department and shall be applied by the Department.
1. Subpart A - General Provisions.
  2. Subpart C - Beryllium.
  3. Subpart D - Beryllium Rocket Motor Firing.
  4. Subpart E - Mercury.
  5. Subpart F - Vinyl Chloride.
  6. Subpart J - Equipment Leaks (Fugitive Emission Sources) of Benzene.
  7. Subpart L - Benzene Emissions from Coke By-Product Recovery Plants.
  8. Subpart M - Asbestos.
  9. Subpart N - Inorganic Arsenic Emissions from Glass Manufacturing Plants.
  10. Subpart O - Inorganic Arsenic Emissions from Primary Copper Smelters.
  11. Subpart P - Inorganic Arsenic Emissions from Arsenic Trioxide and Metallic Arsenic Production.
  12. Subpart V - Equipment Leaks (Fugitive Emission Sources).
  13. Subpart Y - Benzene Emissions From Benzene Storage Vessels.
  14. Subpart BB - Benzene Emissions from Benzene Transfer Operations.
  15. Subpart FF - Benzene Waste Operations.
- B.** Except as provided in R18-2-1102, the following subparts of 40 CFR 63, NESHAPs for Source Categories, and all accompanying appendices, adopted as of July 1, ~~1997~~1998, and no future editions or amendments, are incorporated by reference. These standards are on file with the Office of the Secretary of State and the Department and shall be applied by the Department.
1. Subpart A - General Provisions.
  2. Subpart B - Requirements for Control Technology Determinations for Major Sources in Accordance with Clean Air Act Sections, Sections 112(g) and 112(j).
  3. Subpart D - Regulations Governing Compliance Extensions for Early Reductions of Hazardous Air Pollutants.
  4. Subpart F - National Emission Standards for Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry.
  5. Subpart G - National Emission Standards for Organic Hazardous Air Pollutants from the Synthetic Organic Chemical Manufacturing Industry for Process Vents, Storage Vessels, Transfer Operations, and Wastewater.
  6. Subpart H - National Emission Standards for Organic Hazardous Air Pollutants for Equipment Leaks.
  7. Subpart I - National Emission Standards for Organic Hazardous Air Pollutants for Certain Processes Subject to the Negotiated Regulation for Equipment Leaks.
  8. Subpart L - National Emission Standards for Coke Oven Batteries.
  9. Subpart M - National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities.
  10. Subpart N - National Emission Standards for Chromium Emissions From Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks.
  11. Subpart O - Ethylene Oxide Emissions Standards for Sterilization Facilities.
  12. Subpart Q - National Emission Standards for Hazardous Air Pollutants for Industrial Process Cooling Towers.
  13. Subpart R - National Emission Standards for Gasoline Distribution Facilities (Bulk Gasoline Terminals and Pipeline Breakout Stations).
  14. Subpart S - National Emission Standards for Hazardous Air Pollutants from the Pulp and Paper Industry.

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- ~~44~~15. Subpart T - National Emission Standards for Halogenated Solvent Cleaning.
- ~~45~~16. Subpart U - National Emission Standards for Hazardous Air Pollutant Emissions: Group I Polymers and Resins.
- ~~46~~17. Subpart W - National Emission Standards for Hazardous Air Pollutants for Epoxy Resins Production and Non-Nylon Polyamides Production.
- ~~47~~18. Subpart X - National Emission Standards for Hazardous Air Pollutants from Secondary Lead Smelting.
- ~~48~~19. Subpart CC - National Emission Standards for Hazardous Air Pollutants from Petroleum Refineries.
- ~~49~~20. Subpart DD - National Emission Standards for Hazardous Air Pollutants from Off-Site Waste and Recovery Operations.
- ~~20~~21. Subpart EE - National Emission Standards for Magnetic Tape Manufacturing Operations.
- ~~24~~22. Subpart GG - National Emission Standards for Aerospace Manufacturing and Rework Facilities.
- ~~22~~23. Subpart JJ - National Emission Standards for Wood Furniture Manufacturing Operations.
- ~~23~~24. Subpart KK - National Emission Standards for the Printing and Publishing Industry.
- ~~25.~~ Subpart LL - National Emission Standards for Hazardous Air Pollutants for Primary Aluminum Reduction Plants.
- ~~24~~26. Subpart OO - National Emission Standards for Tanks--Level 1.
- ~~25~~27. Subpart PP - National Emission Standards for Containers.
- ~~26~~28. Subpart QQ - National Emission Standards for Surface Impoundments.
- ~~27~~29. Subpart RR - National Emission Standards for Individual Drain Systems.
- ~~28~~30. Subpart VV - National Emission Standards for Oil-Water Separators and Organic-Water Separators.
- ~~31.~~ Subpart EEE - National Emission Standards for Hazardous Air Pollutants From Hazardous Waste Combustors.
- ~~29~~32. Subpart JJJ - National Emission Standards for Hazardous Air Pollutant Emissions: Group IV Polymers and Resins.

**Appendix 2. TEST METHODS AND PROTOCOLS**

The following test methods and protocols are approved for use as directed by the Department under this Chapter. These standards are incorporated by reference as of July 1, ~~1997~~ 1998 (and no future editions or amendments), except for incorporation dates specifically provided. These standards are on file with the Department and the Office of the Secretary of State, and items 1-10 are also available from the U.S. Government Printing Office, Superintendent of Documents, Mail Stop SSOP, Washington D.C. 20402-9328.

- ~~1.~~ 40 CFR 50;
- ~~2.~~ 40 CFR 50, Appendices A through K;
- ~~43.~~ 40 CFR Part 51, Appendix M, Appendix S, Section IV, and Appendix W;
- ~~4.~~ 40 CFR 52, Appendices D and E;
- ~~5.~~ 40 CFR 58;
- ~~6.~~ 40 CFR 58, all appendices;
- ~~27.~~ 40 CFR Part 60, all appendices;
- ~~38.~~ 40 CFR Part 61, all appendices;
- ~~49.~~ 40 CFR Part 63, all appendices;
- ~~510.~~ 40 CFR Part 75, all appendices; and
- ~~611.~~ The Department's "Arizona Testing Manual for Air Pollutant Emissions," (March, 1992).