

NOTICES OF PROPOSED RULEMAKING

Unless exempted by A.R.S. § 41-1005, each agency shall begin the rulemaking process by first submitting to the Secretary of State's Office a Notice of Rulemaking Docket Opening followed by a Notice of Proposed Rulemaking that contains the preamble and the full text of the rules. The Secretary of State's Office publishes each Notice in the next available issue of the *Register* according to the schedule of deadlines for *Register* publication. Under the Administrative Procedure Act (A.R.S. § 41-1001 et seq.), an agency must allow at least 30 days to elapse after the publication of the Notice of Proposed Rulemaking in the *Register* before beginning any proceedings for making, amending, or repealing any rule. (A.R.S. §§ 41-1013 and 41-1022)

NOTICE OF PROPOSED RULEMAKING

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 11. STATE BOARD OF DENTAL EXAMINERS

PREAMBLE

1. Sections Affected

R4-11-201
R4-11-202
R4-11-203
R4-11-204
R4-11-205
R4-11-206

Rulemaking Action

New Section
New Section
New Section
New Section
New Section
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. § 32-1207(A)(1), (4), and (5)

Implementing statutes: A.R.S. §§ 32-1240 and 32-1292.01

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

Notice of Rulemaking Docket Opening: 8 A.A.R. 2238, May 24, 2002

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

Name: Julie N. Chapko, Executive Director
Address: Arizona State Board of Dental Examiners
5060 N. 19th Avenue, Suite 406
Phoenix, AZ 85015
Telephone: (602) 242-1492
Fax: (602) 242-1445
E-mail: jnchapko@azbodex.com

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

In April 2002, the Legislature passed H.B. 2029 and established Sections 32-1240 Dental Licensure by Credential and 32-1292.01 Dental Hygienist Licensure by Credential. Both Sections establish the criteria where the Board may waive the examination requirements for dentists and dental hygienists under specific conditions. The proposed rules create new Sections of administrative code to implement the statutory changes. The proposed new rules will be placed in Article 2 under the heading Licensure by Credential. Section R4-11-201 establishes the qualifications of applicants for dental licensure by credential. Section R4-11-202 establishes the application requirements for dental licensure by credential. Section R4-11-203 establishes the qualifications of applicants for dental hygienist licensure by credential. Section R4-11-204 establishes the application requirements for dental hygienist licensure by credential. Section R4-11-205 establishes the qualifications of applicants for dental assistant radiography certification. Section R4-11-206 establishes the application requirements for dental assistant radiography certification. The Board requested the statutory changes for several reasons, including to increase the mobility of dentists, dental hygienists,

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and dental assistants across the country and to potentially increase patient's access to dental care services. Arizona is the only member of the Western Regional Examining Board (comprised of Alaska, Arizona, Idaho, Montana, New Mexico, Oklahoma, Oregon, Texas, Utah, and Washington) that does not have a licensure by credential program. The Western Regional Examining Board (WREB) writes and administers the licensure examination for dentists, dental hygienists, and dental assistants for its ten member states. Nationwide there are 34 states that offer licensure by credential programs.

The Board believes that approval of these rules will benefit the public health and safety by streamlining the licensure process while continuing to ensure the education, training, and monitoring of dental practitioners.

6. A reference to any study relevant to the rule that the agency reviewed and either proposes to rely on in its evaluation of or justification for the rule or proposes not to rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:

Not applicable

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

Not applicable

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

The rules' impact on established Board of Dental Examiner's procedures and office-related costs is substantial. The Board's office-related costs will increase substantially to support the credentialing process established by the rules. The number of licensees who may apply for licensure by credential is estimated at 30 dentists and 35 dental hygienists per year. The estimated increase in revenue if all 30 dentists and 35 dental hygienists obtain licensure by credential would be \$95,000 per year with \$85,500 going into the Dental Board fund and \$9,500 going into the general fund. The Board's estimated costs to process licensure by credential applicants, if the estimated 30 dentists and 35 dental hygienists apply, is \$92,040. The rules net economic impact for the Board is minimal.

The rules' economic impact on individual dentists will be moderate. To obtain licensure by credential, a dentist will pay a \$2,000 fee to the Board in addition to the existing prorated license and jurisprudence fees that are paid by all licensure applicants. The applicant pays a Board-approved investigative agency to verify the applicant's qualifications and credentials. The investigative agency fee is \$500. The three-year dental license fee is \$650 and the jurisprudence fee is \$300. The total estimated costs of dental licensure by credential is \$2,950. In contrast, to obtain licensure by examination, a dentist pays, in addition to the license and jurisprudence fees, a clinical examination fee of \$990, a school facility user fee of from \$100 to \$250, and the additional expenses of providing a patient for the clinical examination. It is estimated that the costs of providing a patient, including travel, lodging, and food, can be as high as \$5,000. The total estimated costs of dental licensure by examination is between \$1,090 and \$6,240.

The rules' economic impact on individual dental hygienists will be moderate. To obtain licensure by credential, a dental hygienist will pay a \$1,000 fee to the Board in addition to the existing prorated license and jurisprudence fees that are paid by all licensure applicants. The applicant pays a Board-approved investigative agency to verify the applicant's qualifications and credentials. The investigative agency fee is \$500. The three-year dental hygienist license fee is \$325 and the jurisprudence fee is \$100. The total estimated costs of dental hygienist licensure by credential is \$1,925. In contrast, to obtain licensure by examination, a dental hygienist pays, in addition to the license and jurisprudence fees, a clinical examination fee of \$580, a school facility user fee of from \$50 to \$100, and the additional expenses of providing a patient for the clinical examination. It is estimated that the costs of providing a patient, including travel, lodging, and food, can be as high as \$5,000. If a dental hygienist applicant also seeks an anesthesia credential, the applicant pays an additional \$160 clinical examination fee and \$15 school facility user fee. The total estimated costs of dental hygienist licensure by examination is between \$1,055 and \$5,855.

The Board, dentists, dental hygienists, and the public benefit from rules that are clear, concise, understandable. The rules benefit the public health and safety by streamlining the licensure process while continuing to ensure the education, training, and monitoring of dental practitioners.

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

Name: Julie N. Chapko, Executive Director
Address: Arizona State Board of Dental Examiners
5060 N. 19th Avenue, Suite 406
Phoenix, AZ 85015

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Telephone: (602) 242-1492
Fax: (602) 242-1445
E-mail: jnchapko@azbodex.com

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

Comments may be written or presented orally. Written comments must be received by 5:00 p.m., Monday, September 9, 2002. An oral proceeding is scheduled for:

Date: September 9, 2002
Time: 10:00 a.m.
Location: 5060 N. 19th Avenue, Suite 406
Phoenix, AZ 85015

A person may request information about the oral proceeding by contacting the person listed above.

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. The full text of the rules follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 11. STATE BOARD OF DENTAL EXAMINERS

ARTICLE 2. ~~EXPIRED~~ LICENSURE BY CREDENTIAL

Sections

R4-11-201. ~~Expired~~ Dental Licensure by Credential
R4-11-202. ~~Expired~~ Application for Dental Licensure by Credential
R4-11-203. ~~Expired~~ Dental Hygienist Licensure by Credential
R4-11-204. ~~Repealed~~ Application for Dental Hygienist Licensure by Credential
R4-11-205. ~~Repealed~~ Dental Assistant Radiography Certification by Credential
R4-11-206. ~~Repealed~~ Application for Dental Assistant Radiography Certification by Credential

ARTICLE 2. ~~EXPIRED~~ LICENSURE BY CREDENTIAL

R4-11-201. ~~Expired~~ Dental Licensure by Credential

A. Credential by examination. To be eligible for dental licensure through credential by examination, an applicant shall:

1. Meet the qualifications and requirements in A.R.S. §§ 32-1232(A) and (C), 32-1233(1) and (3), and 32-1240;
2. Pass a Board-approved examination equivalent to the Western Regional Examining Board examination within five years of the date of application for licensure by credential; and
3. Not be the subject of final or pending disciplinary action in any state, territory, or district of the United States or not have resigned or surrendered a license while under investigation or while action was pending against the license by any professional licensing agency.

B. Credential by licensure. To be eligible for dental licensure through credential by licensure, an applicant shall:

1. Meet the qualifications and requirements in A.R.S. §§ 32-1232(A) and (C), 32-1233(1) and (3), and 32-1240;
2. Have a current dental license in another state, territory, or district of the United States;
3. Practice dentistry for a minimum of 5000 hours during the five years immediately before applying for licensure by credential. For purposes of this subsection, dental practice may include experience as a dental educator at a dental or dental hygiene school accredited by the American Dental Association Commission on Dental Accreditation and employment as a dentist in a public health setting;
4. Not be the subject of final or pending disciplinary action in any state, territory, or district of the United States or not have resigned or surrendered a license while under investigation or while action was pending against the license by any professional licensing agency;

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5. Not take and fail the Western Regional Examining Board examination or its equivalent within five years of the date of application for licensure by credential; and
6. Complete the continuing dental education required in R4-11-1203 during the three years immediately before applying for licensure by credential.

R4-11-202. Expired Application for Dental Licensure by Credential

- A.** An applicant for dental licensure by credential shall bear the cost of and ensure that the following information is provided to the Board through an investigative agency approved by the Board:
1. A sworn statement of the applicant's qualifications and eligibility;
 2. A photograph of the applicant that is not more than six months old;
 3. An official transcript from the applicant's dental school;
 4. A National Board examination score card;
 5. A copy of the applicant's current cardiopulmonary resuscitation (CPR) certificate;
 6. A copy of the self-inquiry from the National Practitioner Data Bank that is not more than six months old;
 7. If the applicant is eligible under R4-11-201(A):
 - a. A copy of the certificate or score card from the Western Regional Examining Board or an equivalent examination indicating that the applicant passed the examination within five years of the date of application for licensure by credential; and
 - b. A letter of endorsement from any other jurisdiction in which an applicant is or has been licensed, if applicable; and
 8. If the applicant is eligible under R4-11-201(B):
 - a. A written affidavit affirming that the applicant successfully completed a clinical examination;
 - b. A letter of endorsement from any other jurisdiction in which an applicant is or has been licensed;
 - c. A written affidavit affirming dental practice within five years of the date of application for licensure by credential;
 - d. A written affidavit affirming that the applicant has not failed the Western Regional Examining Board examination or its equivalent within five years of the date of application for licensure by credential; and
 - e. A written affidavit affirming the applicant has completed the continuing dental education required in R4-11-1203 during the three years immediately before applying for licensure by credential.
- B.** The Board may request that an applicant for dental licensure by credential provide:
1. An official copy of the applicant's dental school diploma, and
 2. A copy of a certified document which indicates the reason for a name change if the applicant's application contains different names.
- C.** An applicant for dental licensure by credential shall pay the prescribed credential application fee, except the credential application fee is reduced by 50% for applicants who are contracted to work:
1. In underserved areas, such as declared or eligible Health Professional Shortage Areas (HPSAs); or
 2. In other facilities caring for underserved populations, as recognized by the Arizona Department of Health Services and approved by the Board.
- D.** An applicant for dental licensure by credential who contracts to work in areas or facilities as described in subsection (C) shall:
1. Commit to a three year exclusive, full-time service period;
 2. File a copy of the employment contract with the Board; and
 3. Complete an annual employment verification statement.
- E.** A licensee's failure to comply with the requirements in R4-11-202(D) is considered unprofessional conduct and may result in disciplinary action.

R4-11-203. Expired Dental Hygienist Licensure by Credential

- A.** Credential by examination. To be eligible for dental hygienist licensure through credential by examination, an applicant shall:
1. Meet the qualifications and requirements in A.R.S. §§ 32-1284(A), 32-1285(1) and (3), and 32-1292.01;
 2. Pass a Board-approved examination equivalent to the Western Regional Examining Board examination within five years of the date of application for licensure by credential; and
 3. Not be the subject of final or pending disciplinary action in any state, territory, or district of the United States or not have resigned or surrendered a license while under investigation or while action was pending against the license by any professional licensing agency.
- B.** Credential by licensure. To be eligible for dental hygienist licensure through credential by licensure, an applicant shall:
1. Meet the qualifications and requirements in A.R.S. §§ 32-1284(A), 32-1285(1) and (3), and 32-1292.01;
 2. Have a current dental hygienist license in another state, territory, or district of the United States;

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3. Practice dental hygiene for a minimum of 1000 hours during the two years immediately before applying for licensure by credential. For purposes of this subsection, dental hygiene practice may include experience as a dental hygiene educator at a dental hygiene school accredited by the American Dental Association Commission on Dental Accreditation and employment as a dental hygienist in a public health setting;
4. Not be the subject of final or pending disciplinary action in any state, territory, or district of the United States or not have resigned or surrendered a license while under investigation or while action was pending against the license by any professional licensing agency;
5. Not take and fail the Western Regional Examining Board examination or its equivalent within five years of the date of application for licensure by credential; and
6. Complete the continuing dental education required in R4-11-1204 during the three years immediately before applying for licensure by credential.

R4-11-204. ~~Repealed~~ Application for Dental Hygienist Licensure by Credential

A. An applicant for dental hygienist licensure by credential shall bear the cost of and ensure that the following information is provided to the Board through an investigative agency approved by the Board:

1. A sworn statement of the applicant's qualifications and eligibility;
2. A photograph of the applicant that is not more than six months old;
3. An official transcript from the applicant's dental hygiene school;
4. A National Board examination score card;
5. A copy of the applicant's current cardiopulmonary resuscitation (CPR) certificate;
6. A copy of the self-inquiry from the National Practitioner Data Bank that is not more than six months old;
7. If the applicant is eligible under R4-11-203(A):
 - a. A copy of the certificate or score card from the Western Regional Examining Board or an equivalent examination indicating that the applicant passed the examination within five years of the date of application for licensure by credential; and
 - b. A letter of endorsement from any other jurisdiction in which an applicant is or has been licensed, if applicable; and
8. If the applicant is eligible under R4-11-203(B):
 - a. A written affidavit affirming that the applicant successfully completed a clinical examination;
 - b. A letter of endorsement from any other jurisdiction in which an applicant is or has been licensed;
 - c. A written affidavit affirming dental hygiene practice within two years of the date of application for licensure by credential;
 - d. A written affidavit affirming that the applicant has not failed the Western Regional Examining Board examination or its equivalent within five years of the date of application for licensure by credential; and
 - e. A written affidavit affirming the applicant has completed the continuing dental education required in R4-11-1204 during the three years immediately before applying for licensure by credential.

B. The Board may request that an applicant for dental hygienist licensure by credential provide:

1. An official copy of the applicant's dental hygiene school diploma; and
2. A copy of a certified document which indicates the reason for a name change if the applicant's application contains different names.

C. An applicant for dental hygienist licensure by credential shall pay the prescribed credential application fee, except the credential application fee is reduced by 50% for applicants who are contracted to work:

1. In underserved areas, such as declared or eligible Health Professional Shortage Areas (HPSAs); or
2. In other facilities caring for underserved populations, as recognized by the Arizona Department of Health Services and approved by the Board.

D. An applicant for dental hygienist licensure by credential who contracts to work in areas or facilities as described in subsection (C) shall:

1. Commit to a three year exclusive, full-time service period;
2. File a copy of the employment contract with the Board; and
3. Complete an annual employment verification statement.

E. A licensee's failure to comply with the requirements in R4-11-204(D) is considered unprofessional conduct and may result in disciplinary action.

R4-11-205. ~~Repealed~~ Dental Assistant Radiography Certification by Credential

Eligibility. To be eligible for dental assistant radiography certification by credential, an applicant shall have a current certification to take dental radiographs in another jurisdiction of the United States that required successful completion of a written and clinical radiography examination.

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R4-11-206. ~~Repealed~~ Application for Dental Assistant Radiography Certification by Credential

- A.** An applicant for dental assistant radiography certification by credential shall provide the following information to the Board:
1. A sworn statement of the applicant's eligibility, and
 2. A letter of endorsement with confirmation of successful completion of written and clinical radiography examination from another jurisdiction where the applicant is certified.
- B.** The Board may request that an applicant for dental assistant radiography certification by credential provide a copy of a certified document which indicates the reason for a name change if the applicant's application contains different names.

NOTICE OF PROPOSED RULEMAKING

TITLE 17. TRANSPORTATION

**CHAPTER 4. DEPARTMENT OF TRANSPORTATION
TITLE, REGISTRATION, AND DRIVER LICENSES**

PREAMBLE

1. **Sections Affected:** **Rulemaking Action:**
R17-4-406 Amend
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. § 28-366
Implementing statute: A.R.S. § 28-3160
3. **A list of all previous notices appearing in the Register addressing the proposed rule:**
Notice of Rulemaking Docket Opening: 8 A.A.R. 2664, June 21, 2002
4. **The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
Name: Brent P. Heiss, Rules Analyst
Address: Arizona Department of Transportation
Administrative Rules Unit, Mail Drop 507M
3737 N. 7th Street, Suite 160
Phoenix, AZ 85014-5017
Telephone: (602) 712-8449
Fax: (602) 241-1624
E-mail: bheiss@dot.state.az.us
Please visit the ADOT web site to track progress of this rule and any other agency rulemaking matter at www.dot.state.az.us/about/rules/index.htm.
5. **An explanation of the rule, including the agency's reasons for initiating the rule:**
R17-4-406 concerns minor's applications for driver licenses. The Department reviewed this rule as it committed to do in a five-year rule review report approved by the Governor's Regulatory Review Council on June 23, 2000 (F-00-0603). The Department plans to update the rule for language and style and to conform it to the current statute.
6. **A reference to any study that the agency proposes to rely on in its evaluation of or justification for the proposed rule and where the public may obtain or review the study, all data underlying each study, any analysis of the study and other supporting material:**
None
7. **A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**
Not applicable

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- 8. The preliminary summary of the economic, small business, and consumer impact:**
This rulemaking will update the current rule for clarity and this should decrease the cost of agency and public compliance. Overall, this rulemaking will probably have little economic, small business, and consumer impact.
- 9. The name and address of agency personnel with whom persons may communicate regarding the accuracy of the economic, small business, and consumer impact statement:**
Interested persons may communicate with the Rules Analyst listed in item #4 regarding the economic, small business, and consumer impact statement.
- 10. The time, place, and nature of the proceedings for the making, amendment, or repeal of the rule, or if no proceeding is scheduled, where, when, and how persons may request an oral proceeding on the proposed rule:**
No public hearing is planned for this rulemaking. Oral comments or a request for a public hearing may be made Monday through Friday, 8:00 a.m. to 5:00 p.m., at the phone number in item #4. Written comments may also be sent to the address in item #4. All comments must be received by 4:30 p.m. on Friday, September 6, 2001, at which time the public record will close.
- 11. Any other matters prescribed by statute that are applicable to the specific agency or to any specific rule or class of rules:**
None
- 12. Incorporations by reference and their location in the rules:**
None
- 13. The full text of the rules follows:**

TITLE 17. TRANSPORTATION

**CHAPTER 4. DEPARTMENT OF TRANSPORTATION
TITLE, REGISTRATION, AND DRIVER LICENSES**

ARTICLE 4. DRIVER LICENSES

Section

R17-4-406. Minor's application for permit or license Required Signatures for Minor's Application

ARTICLE 4. DRIVER LICENSES

R17-4-406. Minor's application for permit or license Required Signatures for Minor's Application

- A.** For the purposes of administering the provisions of A.R.S. § 28-417, the following definitions are adopted:
1. "Custody" as used in subsection (B) of A.R.S. § 28-417 means legal custody granted to both parents by a court order, either jointly or during specified periods, but does not include visitation rights.
~~"Custody" as used in subsection (A) of A.R.S. § 28-417 means legal custody rights in a parent whose custody rights as parent of a child have not been severed by a court order or, in the case of divorced parents, only 1 parent was granted custody of the child, and excludes visitation rights.~~
 2. "Guardian" means one who has been appointed by a court of law to care for a minor child, but only if both parents of the child are deceased, or an agency as defined in A.R.S. § 8-513.
 3. "Person having custody of a minor child whose parents are deceased" means a person who is not a legal guardian of the child but who has for any reason assumed responsibility for the care, control, education, support and shelter of such a child.
 4. "Parent" means the natural or adoptive father or mother of a child.
 5. "Application", as used in this rule, means the Legal Guardian Affidavit which the Motor Vehicle Division requires to be submitted with each minor's driver license application.
- B.** ~~When both parents must sign: If the parents of a child are divorced but have both been awarded custody of the child, both must sign the application.~~
- C.** ~~Procedure when both parents sign: If both parents sign a child's application, no proof of custody need be furnished.~~
- D.** ~~Procedure when only 1 parent signs:~~
1. ~~If the signing parent is married to the child's other parent, that fact shall be stated and it shall be presumed the signing parent has custody of the child.~~
 2. ~~If the signing parent is not married to the child's parent because the other parent is deceased, that fact shall be stated and it shall be presumed the signing parent has custody of the child.~~
 3. ~~If the signing parent is not married to the child's other parent, the signing parent must affirm that the other parent does not have custody of the child, in which event it shall be presumed the signing parent has custody of the child.~~

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- E.** Procedure when both parents are deceased:
1. Applications presented which are not signed by a parent because both are deceased must be accompanied by certified copies of certificates of death or other satisfactory proof of death, such as, by way of example but not limitation, a court judgment, affidavits of close relatives of the child or school records.
 2. A person who is guardian of a child shall sign an application as defined by this rule or furnish a certified court order appointing guardianship.
 3. An employer signing the application must certify the minor is employed by that person on the date of application.
 4. A person who has custody of a child shall sign a Legal Guardian Affidavit affirming custody or furnish a certified court order awaiting custody.
- F.** Proof of custody. Proof of custody may be established by a certified copy of the court order awarding custody or a written affirmation by the person signing the application.
- G.** Adoption of questionnaire. The attached Legal Guardian Affidavit is adopted for use in satisfying the requirements of this rule, is incorporated by reference, and is on file in the Office of the Secretary of State.
- A.** Definitions
1. "Minor's application" means the application of a person under eighteen years of age for an instruction permit, a class G or M driver license, or an endorsement to a class G or M driver license.
 2. "Parent" means a person's natural or adoptive mother or father or;
 3. Court appointed guardian through divorce decree or foster parent.
- B.** If a parent signs a minor's application, the parent shall provide written proof in one of the following ways:
1. The parent's name is on the minor's birth certificate.
 2. The parent's name is the same as that shown on the minor's birth certificate, but the parent's name has been legally changed.
 3. The court order showing the parent is the legal adoptive parent of the minor; or
 4. If a foster parent signs the minor's application the foster parent shall provide to MVD a copy of the document placing the minor with the foster parent.
 5. Any other proof evidencing parentage.
- C.** If a legal guardian signs the minor's application the legal guardian shall provide to MVD a copy of the court order assigning guardianship.
- D.** If a person signs the minor's application as a responsible person, the responsible person shall provide to MVD copies of the death certificates of the minor's parents; and
- E.** If a minor's employer signs the minor's application the employer shall provide to MVD written proof of the minor's employment.

NOTICE OF PROPOSED RULEMAKING

TITLE 17. TRANSPORTATION

CHAPTER 5. DEPARTMENT OF TRANSPORTATION

COMMERCIAL PROGRAMS

PREAMBLE

- | | |
|---|---|
| <p>1. <u>Sections Affected:</u></p> <p>R17-5-501
R17-5-504
R17-5-505
R17-5-506
R17-5-507</p> | <p><u>Rulemaking Action:</u></p> <p>New Section
Amend
New Section
New Section
Repeal</p> |
|---|---|
- 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. § 28-366
- Implementing statute: A.R.S. § 28-4034
- 3. A list of all previous notices appearing in the Register addressing the proposed rule:**
- Notice of Rulemaking Docket Opening: 8 A.A.R. 2646, June 21, 2002

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

Name: Troy A. Walters, Rules Analyst
Address: Administrative Rules Unit
Department of Transportation, Mail Drop 507M
3737 N. 7th Street, Suite 160
Phoenix, AZ 85014-5079
Telephone: (602) 712-6722
Fax: (602) 241-1624
E-mail: twalters@dot.state.az.us

Please visit the ADOT web site to track progress of this rule and any other agency rulemaking matters at www.dot.state.az.us/about/rules/index.htm.

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

The Arizona Department of Transportation, Motor Vehicle Division (Division) proposes to amend the motor carrier financial responsibility rules. The Division is updating the statutory consistent with the 1997 revision of Arizona Revised Statutes, Title 28. Additionally, the Division is making the rule more clear, concise, and understandable.

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

None

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

Not applicable

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

A.R.S. § 28-4034(B) authorizes to the Division to have a motor carrier certify its financial responsibility if the motor carrier operates a vehicle for a commercial purpose in Arizona that is:

- Over 20,000 pounds declared gross weight;
- Transporting hazardous material, substances, or waste, unless excluded by A.R.S. § 28-4032(A)(2); or
- Transporting passengers for hire, unless operated by a carpool operator defined in A.R.S. § 28-4032(B).

A.R.S. § 28-4034(B) also authorizes the Division to have a motor carrier's insurance company confirm the financial responsibility certified by the motor carrier. The legislature intended to have available to users of the Arizona roads injured by a commercial vehicle listed in the previous paragraph, compensation in the amounts stated in A.R.S. § 28-4033. *McCandless v. United Southern Assurance Company*, 191 Ariz. 167, 172, 953 P.2d 911(App. 1997).

The motor carrier financial responsibility rules, R17-5-504 through R17-5-507, originally effective in 1987, require filing of proof of financial responsibility with the Division for motor carriers operating certain types of commercial vehicles. A.R.S. § 28-4034(B), formerly A.R.S. § 28-1234, authorizes this filing requirement. The Division determined that placing the filing requirement on all operators of the commercial vehicles included in A.R.S. § 28-4032, with a limited exception for commercial vehicles in Arizona carrying commercial agricultural products within 25 miles of the border between Arizona and Mexico, best promotes public safety.

This revision of the motor carrier financial responsibility rules will not increase a motor carrier's or an insurance company's costs related to certifying or confirming the motor carrier's financial responsibility. This certification and confirmation is authorized by statute, and the Division determined that the requiring certification and confirmation best promotes public safety.

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

Questions concerning the economic impact statement may be directed to the agency official listed in item #4.

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

Date: September 4, 2002
Time: 1:00 p.m.
Location: 3737 N. 7th Street, Suite 160
Phoenix, AZ 85014-5079
Nature: Oral Proceeding
Closure: September 6, 2002, 4:30 p.m.

Written, faxed, or internet comments may be made by contacting the rules analyst listed in item #4, between the times of 8:00 a.m. and 4:30 p.m., Monday through Friday, excluding state holidays. The rulemaking's public record will close at 4:30 p.m. on September 6, 2002.

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. The full text of the rules follows:

TITLE 17. TRANSPORTATION

**CHAPTER 5. DEPARTMENT OF TRANSPORTATION
COMMERCIAL PROGRAMS**

ARTICLE 5. FINANCIAL RESPONSIBILITY

Section

R17-5-501. ~~Reserved Definitions~~
R17-5-504. ~~Motor Carrier Financial Responsibility Requirement to Submit Proof of Financial Responsibility; Applicability~~
R17-5-505. ~~Form E; procedures for preparing, filing, and canceling liability insurance~~ Procedure for Submitting Proof of Financial Responsibility
R17-5-506. ~~Certificate of Insurance; procedures for preparing, filing, and canceling liability insurance~~ Failure to Maintain Proof of Financial Responsibility and Suspension
R17-5-507. ~~Certification when Form E Not Required~~ Repealed

ARTICLE 5. FINANCIAL RESPONSIBILITY

R17-5-501. Reserved Definitions.

In this Article unless context otherwise requires:

1. "Binder" means a contract for temporary insurance as described in A.R.S. § 20-1120.
2. "Division" means the Arizona Department of Transportation, Motor Vehicle Division.
3. "Initial motor vehicle registration" means the first time a motor carrier registers a motor vehicle or a vehicle combination in Arizona.
4. "Insurance company" means an entity that issues motor carrier liability insurance policies.
5. "Lightweight motor vehicle" is defined in A.R.S. § 28-5201(6).
6. "Managing general agent" is defined in A.R.S. § 20-284(A).
7. "Motor carrier" means a person who operates or causes to be operated a motor vehicle on a public highway. A.R.S. § 28-5201(8).
8. "Motor vehicle" means a self-propelled motor driven vehicle or vehicle combination, except a lightweight motor vehicle, that is used on a public highway in the furtherance of a commercial enterprise. A.R.S. § 28-5201(9).
9. "Motor vehicle liability policy" is defined in A.R.S. § 28-4001(4).
10. "Proof of financial responsibility" means proof of ability to respond in damages for liability on account of accidents occurring after the effective date of the proof and arising out of the ownership, maintenance or use of a motor vehicle, in the amounts required by A.R.S. §§ 28-4009 or 28-4033. A.R.S. § 28-4001(7).
11. "Vehicle combination" means a motor vehicle and the trailers and semitrailers that it tows. A.R.S. § 28-5431(3).

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R17-5-504. ~~Motor Carrier Financial Responsibility Requirement to Submit Proof of Financial Responsibility; Applicability~~

~~A. Definitions:~~

- ~~1. "Authorized representative" means any person who has written authorization from the insurance carrier to sign documents on behalf of the insurance carrier.~~
- ~~2. "Certificate holder" or "Commission" means the Department of Transportation, Motor Vehicle Division.~~
- ~~3. "Commercial enterprise" means an activity carried on for gain or profit.~~
- ~~4. "For hire" means the transportation of passengers in the furtherance of a commercial enterprise for which a specific rate or fee is charged as a condition to obtaining the service except for the following:
 - ~~a. Motor vehicles owned and operated by a church.~~
 - ~~b. Motor vehicles owned and operated by a non-profit school classified as tax exempt by the federal government and used exclusively for transporting passengers in connection with school functions.~~
 - ~~e. Motor vehicles owned and operated by any non-profit search and rescue organization that qualifies for exemption from gross weight fees under A.R.S. § 28-206.~~
 - ~~d. Motor vehicles owned and operated by a foreign government, federal government, state, political subdivision of a state, or an Indian tribal government.~~
 - ~~e. Motor vehicles owned and operated privately and exclusively as school buses under contract to a school district.~~
 - ~~f. Motor vehicles owned and operated by organizations that qualify for exemption from taxation of income under A.R.S. § 43-1201.~~
 - ~~g. Motor vehicles owned and operated by a car pool operator as defined at A.R.S. § 28-101(9).~~~~
- ~~5. Hazardous materials in the context of these rules has the same meaning as set forth in R17-5-209.~~
- ~~6. "Insurance binder" has the meaning prescribed in A.R.S. § 20-1120.~~
- ~~7. "Insurance carrier" means a business entity that enters into contracts to indemnify or guarantee persons subject to Motor Carrier Financial Responsibility against loss from specified contingencies.~~
- ~~8. "Insured" means any person who is subject to and in compliance with the Motor Carrier financial Responsibility Act set forth at A.R.S. §§ 28-1231 et seq.~~
- ~~9. "Producer" means any person, general agent, broker, or agent authorized to transact business on behalf of the insurance carrier.~~
- ~~10. "Qualifier" means a specified contingency that the insurance carrier and the insured have agreed, and the Director of the Motor Vehicle Division has accepted will not be indemnified or guaranteed against loss.~~

~~B. General provisions:~~

- ~~1. Every owner, lessor, or lessee operating a motor vehicle in the furtherance of a commercial enterprise with a declared gross vehicle weight in excess of 20,000 pounds or transporting hazardous materials, substances or wastes, regardless of gross vehicle weight, unless exempted by A.R.S. § 28-1232(B), or operating a passenger-carrying motor vehicle, bus, or van used to transport passengers for hire, and who is subject to registration pursuant to A.R.S. §§ 28-221, 28-225, 28-302 or 28-501 shall file with Motor Vehicle Division, proof of financial responsibility in amounts equal to or greater than the minimum amounts prescribed in A.R.S. § 28-1233.~~
- ~~2. Every owner or lessor operating a motor vehicle that is subject to A.R.S. §§ 28-221, 28-225, 28-302, or 28-501 and that is tax licensed as defined under A.R.S. §§ 28-1559 or 28-1599.01 shall comply with the provisions of R17-5-505 or R17-5-506. If the owner or lessor is operating a motor vehicle that is not tax licensed under A.R.S. §§ 28-1559 or 28-1599.01, the owner or lessor shall comply with the provisions of R17-5-507.~~
- ~~3. Every owner, lessor, or lessee operating a light weight motor vehicle as defined in A.R.S. § 28-1599(3), registered pursuant to A.R.S. §§ 28-221 or 28-225, in a manner that makes the owner, lessor, or lessee subject to Motor Carrier Financial Responsibility shall comply with the provisions of R17-5-505 or R17-5-506.~~
- ~~4. Insurance carriers that provide insurance to persons who are subject to Motor Carrier Financial Responsibility shall comply with the filing requirements set forth at R17-5-505, R17-5-506, or R17-5-507.~~
- ~~5. The following documents, when issued by an insurance carrier or the insurance carrier's authorized representative, will be accepted by the Motor Vehicle Division as proof of financial responsibility:
 - ~~a. Form E. Uniform Motor Carrier Bodily Injury and Property Damage Liability Certificate of Insurance (see R17-5-505).~~
 - ~~b. Form K. Uniform Notice of Cancellation of Motor Carrier Insurance Policies (see R17-5-505).~~
 - ~~e. Certificate of Insurance (see R17-5-506 and R17-5-507).~~
 - ~~d. Written 45-day notice of cancellation of Certificate of Insurance.~~~~
- ~~6. The Motor Vehicle Division shall provide a conformed copy of any document filed by an insurance carrier as proof of financial responsibility to an insurance carrier that submits a copy of the document at the time that the original document is filed and a self-addressed, stamped envelope.~~

~~C. Exemption.~~ These rules do not apply to owners, lessors, or lessees who operate motor vehicles carrying agricultural products within 25 miles of the border between Arizona and Mexico.

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- D.** Failure to comply. If the owner, lessor, or lessee of a motor vehicle is subject to Motor Carrier Financial Responsibility, the Motor Vehicle Division shall register the motor vehicle only if the owner, lessor, or lessee complies with A.R.S. §§ 28-1233 or 28-1235, and files proof of financial responsibility in accordance with R17-5-505 or R17-5-506.
- E.** Noncompliance.
1. The Motor Vehicle Division shall cancel the registration of a motor vehicle if the owner, lessor, or lessee of the motor vehicle, who is subject to Motor Carrier Financial Responsibility, permits insurance on the motor vehicle to be canceled.
 2. The Motor Vehicle Division shall reissue a registration for a motor vehicle for which the registration is canceled if the owner, lessor, or lessee of the motor vehicle:
 - a. Submits an insurance binder covering the motor vehicle to the Motor Vehicle Division, and
 - b. Filed a Form E prior to expiration of the insurance binder with the Motor Vehicle Division.
 3. If the owner, lessor, or lessee of the motor vehicle fails to comply with subsections (E)(2)(a) and (b), the Motor Vehicle Division shall cancel, without further notice, the reissued registration of the motor vehicle.
 4. Upon receipt of notice of insurance cancellation from an insurance carrier, the Motor Vehicle Division shall mail a certified letter to the insured, requiring the insured to provide proof of compliance with A.R.S. § 28-1233 to the Motor Vehicle Division on or before the date on which the insurance cancellation becomes effective.
 5. The Motor Vehicle Division shall cancel the registration and number plate of the motor vehicle owned or operated by a person who is required, but fails to comply with A.R.S. § 28-1233 regarding the motor vehicle or who fails to respond to the Motor Vehicle Division's request for proof of compliance with A.R.S. § 28-1233.
- A.** A motor carrier shall submit to the Division proof of financial responsibility in the amount required by A.R.S. § 28-4033, if:
1. The motor carrier comes under A.R.S. § 28-4032; and
 2. The motor carrier's motor vehicle or vehicle combination is not covered by a motor vehicle liability policy subject to insurance company reporting to the Division under A.R.S. § 28-4148, R17-5-502, and R17-5-503.
- B.** A motor carrier that comes under subsections (A)(1) and (A)(2) shall comply with R17-5-502 and R17-5-503.
1. A motor carrier is responsible for determining if it comes under subsections (A)(1) and (A)(2).
 2. An insurance company, its managing general agent, broker, or agent may submit, on behalf of a motor carrier, proof of financial responsibility required under R17-5-502 or R17-5-503.

R17-5-505. ~~Form E, procedures for preparing, filing and canceling liability insurance~~ Procedure for Submitting Proof of Financial Responsibility

- A.** ~~All insurance filings made on behalf of motor carriers pursuant to this rule shall be completed observing the following procedures for filing and canceling insurance policies.~~
- B.** ~~In lieu of providing to the Motor Vehicle Division the original or certified copy of the insurance policy, the Form E, Uniform Motor Carrier Bodily Injury and Property Damage Liability Certificate of Insurance may be filed. The certificate must contain the following information:~~
1. ~~The Arizona Department of Transportation, Motor Vehicle Division, shall be named as the Commission.~~
 2. ~~The full name and address of the insurance carrier.~~
 3. ~~The full name and address of the insured.~~
 4. ~~Effective date of the insurance policy.~~
 5. ~~Insurance policy number.~~
 6. ~~Signature of authorized representative.~~
- C.** ~~Notice of Cancellation. The Form K, Uniform Notice of Cancellation of Motor Carrier Insurance Policy, shall be used in all cases when an insurance policy is canceled. The Form K must contain the following information:~~
1. ~~The Arizona Department of Transportation, Motor Vehicle Division, shall appear as the Commission.~~
 2. ~~The full name and address of the insured.~~
 3. ~~The full name and address of the insurance carrier.~~
 4. ~~Cancellation effective date.~~
 5. ~~Signature of authorized representative.~~
- A.** A motor carrier that comes under R17-5-504(B)(1) and R17-5-504(B)(2) shall submit proof of financial responsibility, in the amount required by A.R.S. § 28-4033, to the Division:
1. At the time of initial motor vehicle registration, and
 2. As notified by the Division after initial motor vehicle registration.
- B.** As proof of financial responsibility, a motor carrier that comes under R17-5-504(B)(1) and R17-5-504(B)(2) shall submit the original or photocopy of:
1. A valid liability insurance policy;
 2. A binder dated less than 90 days before the submission date;
 3. A completed and signed Form E Uniform Motor Carrier Bodily Injury and Property Damage Liability Certificate of Insurance, naming the Arizona Department of Transportation as the Commission;

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4. A completed and signed Certificate of Liability Insurance form, naming the Arizona Department of Transportation, Motor Vehicle Division as the certificate holder; or
5. A certificate of self-insurance issued by the Division after a motor carrier meets the requirements of A.R.S. §§ 28-4007 and 28-4035.

C. Before a binder expires, a motor carrier shall submit:

1. A binder from an insurance company other than the insurance company named in the first binder; or
2. A document listed in subsections (B)(1) or (B)(3) to (B)(5).

D. A person may obtain Form E in blank from Uniform Information Services, Inc.:

1. Mailing address: 125 Nagog Park, Acton, Massachusetts 01720;
2. Telephone: (800) 872-0700;
3. Fax: (978) 263-1824; or
4. Web site: www.uniforminformationservices.com.

E. A person may obtain the Certificate of Liability Insurance form in blank from ACORD:

1. Mailing address: 1 Blue Hill Plaza, P.O. Box 1529, 15th Floor, Pearl River, New York 10965;
2. Telephone: (800) 444-3341, ext. 506;
3. Fax (845) 620-3600, or;
4. Web site: www.acord.org.

R17-5-506. Certificate of Insurance; procedures for preparing, filing and canceling liability insurance Failure to Maintain Proof of Financial Responsibility and Suspension

~~A.~~ ~~A Certificate of Insurance may be submitted in lieu of the Form E required under R17-5-505 on behalf of motor carrier vehicles subject to the financial responsibility requirements of R17-5-504. The Certificate of Insurance shall contain the following information:~~

1. ~~The full name, address and telephone number of the producer.~~
2. ~~The full name, address and telephone number of the insured.~~
3. ~~The full name, address and telephone number of the insurance carrier.~~
4. ~~The liability insurance policy number.~~
5. ~~Policy effective date.~~
6. ~~Policy expiration date.~~
7. ~~The amount of liability coverage.~~
8. ~~If multiple liability insurance policies have been written, such as layered or excess coverage, all names, addresses, telephone numbers, policy numbers, effective dates and expiration dates as indicated in this rule shall be provided and itemized on the Certificate of Insurance.~~
9. ~~The Arizona Department of Transportation, Motor Vehicle Division, shall be named as the Certificate Holder.~~

~~B.~~ ~~Notice of Cancellation. All Certificate of Insurance filings shall contain a cancellation statement similar to the following: "Should any of the above described policies be canceled before the expiration date thereof, the issuing company will mail a 45-day notice to the Certificate Holder. Failure to mail such notice shall impose obligation or liability upon the insurance carrier." Such notice of cancellation shall run from the date notice was mailed from the insurance carrier.~~

~~A.~~ ~~If a motor carrier's proof of financial responsibility expires, is cancelled, or otherwise lapses, with no new proof of financial responsibility submitted, the Division shall send the motor carrier a dated intent-to-suspend notice by regular mail.~~

1. ~~The motor carrier shall, within 20 days after the date of the intent-to-suspend notice, submit to the Division proof of financial responsibility complying with R17-5-505.~~
2. ~~If the motor carrier does not timely submit the required proof of financial responsibility, the Division shall suspend the motor carrier's vehicle registration.~~
3. ~~If the motor carrier submits the required proof of financial responsibility during the suspension, the Division shall reinstate the motor carrier's vehicle registration.~~

~~B.~~ ~~A motor carrier whose vehicle registration is suspended for failure to maintain proof of financial responsibility may request a hearing on the Division's action.~~

1. ~~17 A.A.C. Chapter 1, Article 5 applies to a hearing request and to any hearing conducted.~~
2. ~~The scope of a hearing is limited to whether the motor carrier has the required proof of financial responsibility.~~

R17-5-507. Certification when Form E Not Required Repealed

~~A.~~ ~~Any owner, lessor, or lessee of a motor vehicle with a declared gross weight of 26,000 pounds or less, who is subject to the financial responsibility requirements prescribed in R17-5-504, and who registers the motor vehicle, shall file an original of a certificate of insurance with the Motor Vehicle Division Insurance Unit. The certificate of insurance shall be issued by an insurance carrier, and contain the following information:~~

1. ~~The full name, address, and telephone number of the producer;~~
2. ~~The full name, address, and telephone number of the insured;~~
3. ~~The full name, address, and telephone number of the insurance carrier;~~

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4. The policy number;
 5. The policy effective date;
 6. The policy expiration date;
 7. The amounts and types of coverage provided; and
 8. If multiple liability insurance policies have been written, name, address, telephone number, policy number, effective date, and expiration date of each liability insurance policy.
- B.** The Department of Transportation, Motor Vehicle Division, shall be named as the certificate holder.
- C.** The owner, lessor, or lessee of a motor vehicle who is required to file a certificate of insurance under this Section may list a self-insured retention on the certificate of insurance only if a certificate of self-insurance issued by the state pursuant to A.R.S. §§ 28-1222 or 28-1235 is filed with the certificate of insurance.
- D.** A copy of the certificate of insurance shall be submitted with the registration application at the time of initial registration or renewal for each motor vehicle.
- E.** All certificates of insurance shall contain a cancellation statement similar to the following: "Should any of the above described policies be canceled before the expiration date thereof, the issuing company shall mail a 45 day notice to the certificate holder. Failure to mail such notice shall impose obligation or liability upon the insurance carrier." The notice of cancellation shall be effective from the date the notice is mailed by the insurance carrier.
- F.** Upon receipt of a notice of cancellation, or upon expiration of an insurance policy that the owner, lessor, or lessee of a motor vehicle, the Motor Vehicle Division shall suspend the registration of the motor vehicle. The registration suspension shall remain in effect until a valid certificate of insurance covering the motor vehicle is filed with the Motor Vehicle Division.
- G.** The Motor Vehicle Division may randomly verify compliance with the Motor Carrier Financial Responsibility Act. If it is not possible to verify compliance by the owner, lessor, or lessee of a motor vehicle, the Motor Vehicle Division shall mail a notice of intent to suspend the registration of the motor vehicle to the owner, lessor, or lessee. The notice shall indicate that registration of the motor vehicle shall be suspended unless a valid certificate of insurance is filed with the Motor Vehicle Division within 30 days from the date on which the notice is mailed to the owner, lessor, or lessee. A suspended registration shall remain suspended until a valid certificate of insurance is filed with the Motor Vehicle Division.

NOTICE OF PROPOSED RULEMAKING

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 9. DEPARTMENT OF ENVIRONMENTAL QUALITY

WATER POLLUTION CONTROL

PREAMBLE

1. Sections Affected

	<u>Rulemaking Action</u>
R18-9-1001	Amend
R18-9-1002	Amend
R18-9-1003	Amend
R18-9-1004	Amend
R18-9-1005	Amend
R18-9-1006	Amend
R18-9-1007	Amend
R18-9-1008	Amend
R18-9-1011	Amend
R18-9-1013	Amend
R18-9-1014	Amend

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

Authorizing statutes: A.R.S. §§ 49-203, 49-255.01(B), and 49-255.03(A)

Implementing statutes: A.R.S. §§ 49-255.01 and 49-255.03

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

Notice of Rulemaking Docket Opening: 8 A.A.R. 3258, August 2, 2002

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

Name: Shirley J. Conard
Address: Arizona Department of Environmental Quality
1110 W. Washington
Phoenix, AZ 85007
Telephone: (602) 771-4632 (Metro-Phoenix area) or (800) 234-5677, ext. 4632 (other areas)
Fax: (602) 771-4674
E-mail: conard.shirley@ev.state.az.us

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

This rulemaking makes minor clarifications and additional corrections required for consistency with the federal program for the Standards for the Use or Disposal of Sewage Sludge (40 CFR 503). These changes are necessary so that EPA may approve Arizona's implementation of the program under the National Pollutant Discharge Elimination Program.

R18-9-1001. Definitions.

The definition for "Class I sludge management facility"(40 CFR 501.2) and "sewage sludge" (A.R.S. § 49-255) have been added to assist stakeholders in understanding the terms. The definition of "biosolids" was revised to clarify that sludge generated at an industrial facility is not "biosolids" even if the industrial wastewater being treated at the industrial facility included domestic sewage.

R18-9-1002. Applicability and Prohibitions.

Subsection (A) has been amended to address the requirements under 40 CFR 503.1(b)(2) and 40 CFR 503.1(b)(4), which specify that this Article applies to any person who "owns or operates a sewage sludge unit," "biosolids applied to the land or placed on a surface disposal site," "land where biosolids are applied," and "a surface disposal site."

Subsection (E) has been amended to address the requirement under 40 CFR 503.20(a), which includes any person who "prepares biosolids that are placed in a sewage sludge unit."

Subsection (F) has been added to address the requirements under 40 CFR 503.14(a) and 40 CFR 503.24(a), which specify that "a person shall not apply bulk biosolids to the land or place bulk biosolids in a surface disposal site if the biosolids are likely to adversely affect a threatened or endangered species listed under section 4 of the Endangered Species Act or its designated critical habitat."

R18-9-1003. General Requirements.

Subsection (A) has been amended to address the requirement under 40 CFR 503.3(b), 40 CFR 503.12(a) and 40 CFR 503.22(a), which specifies that "a person shall not use or transport biosolids, ~~or~~ apply biosolids to land or place biosolids on a surface disposal site in Arizona, except as established in this Article."

Subsection (F) has been added to address the requirement under 40 CFR 503.7, which specifies that "a person who prepares biosolids shall ensure that the applicable requirements in this article are met when the biosolids are applied to the land or placed on a surface disposal site."

Subsection (G) has been added to address the requirement under 40 CFR 503.5(a), 40 CFR 503.10(b)(2), and 40 CFR 503.10(c)(2), which specifies that "when necessary to protect public health and the environment from any reasonably anticipated adverse effect of a pollutant in the biosolids, the Department may impose requirements for the use or disposal of biosolids, including exceptional quality biosolids, in addition to or more stringent than the requirements in this Article."

Subsection (G) has been further amended to require that the Department notify the preparer, applier, or land owner of these requirements by letter and include the justification for the requirements specifying the length of time or applicability for the requirements."

R18-9-1004. Applicator Registration, Bulk Biosolids.

Subsection (C)(5)(e) has been amended to reflect the numbering change in R18-9-1005.

R18-9-1005. Pollutant Concentrations.

Subsection (A) has been amended to remove the selenium exemption because 40 CFR 503 does not contain an "exemption" for selenium.

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Subsection (B) has been amended to apply to biosolids that are “sold or given away in a bag or other container” instead of bulk biosolids. The existing rule applied the annual pollutant loading rate to bulk biosolids that are not exceptional quality biosolids. In 40 CFR 503.13(a)(4), biosolids that are “sold or given away in a bag or other container” must either meet the pollutant concentrations in 40 CFR 503.13, Table 3 or all the annual pollutant loading rates specified in 40 CFR 503.13, Table 4. The federal regulations do not provide the annual pollutant loading rate option for the application of bulk biosolids. For these reasons, the Department proposes to apply the provision at R18-9-1005(B) to biosolids that are “sold or given away in a bag or other container” instead of bulk biosolids.

Subsection (C) has been added to address the requirement under 40 CFR 503.13(a)(3) and 40 CFR 503.15(a)(2), which specifies that “a person shall not apply bulk biosolids to a lawn or garden that are not exceptional quality biosolids.”

Subsection (D) has been amended to address the requirements under 40 CFR 503.13(a)(2). In 40 CFR 503.13(a)(2), EPA provides two options for meeting the pollutant limits for bulk biosolids that are applied to land. Subsection (D)(1) corresponds with 40 CFR 503.13(a)(2)(ii). Subsection (D)(2) corresponds with 40 CFR 503.13(a)(2)(i).

Subsection (C)(4) has been deleted because 40 CFR 503 does not contain an “exemption” for selenium.

R18-9-1006. Class A and Class B Pathogen Reduction Requirements.

Subsections (C), (D)(3), and (D)(4) have been amended for clarity.

R18-9-1007. Management Practices and General Requirements, subsection (A)(12), and **R18-9-1008. Management Practices, Application of Biosolids to Reclamation Sites,** subsection (A)(11), have been amended to include a storage requirement to prevent impacts due to odors on adjacent dwellings.

R18-9-1011. Transportation.

Subsection (B) has been amended because the definition of “refuse” at A.A.C. R18-13-302(G) excludes “human excreta,” which includes sewage sludge. Therefore, the reference to R18-13-310 is not appropriate in this rule.

R18-9-1013. Recordkeeping.

Subsection (A)(3) has been amended to specify the forms of nitrogen that must be analyzed and provided to the applicator to determine compliance with the agronomic rate requirement at R18-9-1007(A)(7).

R18-9-1014. Reporting.

Subsection (A) has been changed to address the requirement under 40 CFR 503.12(d), 40 CFR 503.12(f), and 40 CFR 503.28, which specifies that the preparer must provide any “necessary information to comply with the Article, including the concentration of pollutants listed in R18-9-1005 and the concentration of nitrogen in the biosolids. The person who prepares biosolids for surface disposal shall comply with 40 CFR 503.28, which is incorporated by reference in R18-9-A905(A)(9).”

Subsections (C) and (E) have been amended for clarity.

Subsection (F) has been amended for clarity and to address the requirements under 40 CFR 503.18. 40 CFR 503.18 requires three categories of biosolids preparers to report to EPA by February 19th of each year. The current rule requires only preparers of “exceptional quality biosolids” to report to the Department by February 19th of each year. To conform this Section with 40 CFR 503.18, the reporting requirement is amended to apply to any preparer that is a Class I Sludge Management Facility, a POTW with a design flow rate equal to or greater than one million gallons per day, or a POTW that serves 10,000 people or more. Preparers of biosolids that are not exceptional quality biosolids and that fall into one or more of those three categories will be subject to this requirement.

6. A reference to any study relevant to the rule that the agency reviewed and either proposes to rely on in its evaluation of or justification for the rule or proposes not to rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material.

None

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

Not applicable

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

This rulemaking is being promulgated to comply with U.S. Environmental Protection Agency's (EPA) request for the Department to conform with the Clean Water Act. To date, the Department has not obtained EPA approval to administer the Sewage Sludge Use and Disposal program, and thus these changes will have a minimal impact on consumers or small businesses in Arizona.

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

Name: Shirley J. Conard
Address: Arizona Department of Environmental Quality
1110 W. Washington
Phoenix, AZ 85007
Telephone: (602) 771-4632
Fax: (602) 771-4674

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

Date: September 5, 2002
Time: 10:00 a.m.
Location: Arizona Department of Environmental Quality
1110 W. Washington, 5th Floor, Room 5100B
Phoenix, AZ 85007
Nature: Oral Proceeding

Written comments on the proposed rules or preliminary economic, small business, and consumer impact statement must be received by 5:00 p.m., September 9, 2002.

Persons with a disability may request a reasonable accommodation, such as a sign language interpreter, by contacting the Department's coordinator, Katie Hubner, at (602) 771-4794 (voice) or (800) 367-3839 (TDD Relay). Requests should be made as early as possible to allow time to arrange the accommodation.

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

None

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

None

13. The full text of the rules follows:

TITLE 18. ENVIRONMENTAL QUALITY

**CHAPTER 9. DEPARTMENT OF ENVIRONMENTAL QUALITY
WATER POLLUTION CONTROL**

**ARTICLE 10. ARIZONA POLLUTANT DISCHARGE ELIMINATION SYSTEM
DISPOSAL, USE, AND TRANSPORTATION OF BIOSOLIDS**

Section	
R18-9-1001.	Definitions
R18-9-1002.	Applicability and Prohibitions
R18-9-1003.	General Requirements
R18-9-1004.	Applicator Registration, Bulk Biosolids
R18-9-1005.	Pollutant Concentrations
R18-9-1006.	Class A and Class B Pathogen Reduction Requirements
R18-9-1007.	Management Practices and General Requirements
R18-9-1008.	Management Practices, Application of Biosolids to Reclamation Sites
R18-9-1011.	Transportation

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R18-9-1014. Reporting

**ARTICLE 10. ARIZONA POLLUTANT DISCHARGE ELIMINATION SYSTEM
DISPOSAL, USE, AND TRANSPORTATION OF BIOSOLIDS**

R18-9-1001. Definitions

In addition to the definitions in A.R.S. § 49-255 and A.A.C. R18-9-A901, the following terms apply to this Article:

1. "Aerobic digestion" means the biochemical decomposition of organic matter in biosolids into carbon dioxide and water by microorganisms in the presence of air.
2. "Agronomic rate" means the whole biosolids application rate on a dry-weight basis that meets the following conditions:
 - a. The amount of nitrogen needed by existing vegetation or a planned or actual crop has been provided, and
 - b. The amount of nitrogen that passes below the root zone of the crop or vegetation is minimized.
3. "Anaerobic digestion" means the biochemical decomposition of organic matter in biosolids into methane gas and carbon dioxide by microorganisms in the absence of air.
4. "Annual biosolids application rate" means the maximum amount of biosolids (dry-weight basis) that can be applied to an acre or hectare of land during a 365-day period.
5. "Annual pollutant loading rate" means the maximum amount of a pollutant that can be applied to an acre or hectare of land during a 365-day period.
6. "Applicator" means the person who arranges for and controls the site-specific land application of biosolids in Arizona.
7. "Biosolids" means sewage sludge, including exceptional quality biosolids, that is placed on, or applied to the land to use the beneficial properties of the material as a soil amendment, conditioner, or fertilizer. Biosolids do not include any of the following:
 - a. Sludge determined to be hazardous under A.R.S. Title 49, Chapter 5, Article 2 and 40 CFR 261;
 - b. Sludge with a concentration of polychlorinated biphenyls (PCBs) equal to or greater than 50 milligrams per kilogram of total solids (dry-weight basis);
 - c. Grit (for example, sand, gravel, cinders, or other materials with a high specific gravity) or screenings generated during preliminary treatment of domestic sewage by a treatment works;
 - d. Sludge generated during the treatment of either surface water or groundwater used for drinking water;
 - e. Sludge generated ~~by~~ at an industrial facility during the treatment of industrial wastewater, ~~or including~~ industrial wastewater combined with domestic sewage;
 - f. Commercial septage, industrial septage, or domestic septage combined with commercial or industrial septage; or
 - g. Special wastes; as defined and controlled under A.R.S. Title 49, Chapter 4, Article 9.
8. "Bulk biosolids" means biosolids that are transported and land-applied in a manner other than in a bag or other container holding biosolids of 1.102 short tons or 1 metric ton or less.
9. "Class I sludge management facility" means any POTW identified under 40 CFR 403.8(a) as being required to have an approved pretreatment program (including POTWs located in a state that has elected to assume local program responsibilities under 40 CFR 403.10(e)) and any other treatment works treating domestic sewage classified as a Class I sludge management facility by the regional administrator in conjunction with the state program director because of the potential for its sludge use or disposal practices to adversely affect public health or the environment.
- ~~9-10.~~ "Clean water act" means the federal water pollution control act amendments of 1972, as amended (P.L. 92-500; 86 Stat. 816; 33 United States Code sections 1251 through 1376). A.R.S. § 49-201(6)
- ~~10-11.~~ "Coarse fragments" means rock particles in the gravel-size range or larger.
- ~~11-12.~~ "Coarse or medium sands" means a soil mixture of which more than 50% of the sand fraction is retained on a No. 40 (0.425 mm) sieve.
- ~~12-13.~~ "Cumulative pollutant loading rate" means the maximum amount of a pollutant applied to a land application site.
- ~~13-14.~~ "Domestic septage" means the liquid or solid material removed from a septic tank, cesspool, portable toilet, marine sanitation device, or similar system or device that receives only domestic sewage. Domestic septage does not include commercial or industrial wastewater or restaurant grease-trap wastes.
- ~~14-15.~~ "Domestic sewage" means waste or wastewater from humans or household operations that is discharged to a publicly or privately owned treatment works. Domestic sewage also includes commercial and industrial wastewaters that are discharged into a publicly-owned or privately-owned treatment works if the industrial or commercial wastewater combines with human excreta and other household and nonindustrial wastewaters before treatment.
- ~~15-16.~~ "Dry-weight basis" means the weight of biosolids calculated after the material has been dried at 105° C until reaching a constant mass.

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- ~~16-17.~~ “Exceptional quality biosolids” means biosolids certified under R18-9-1013(A)(6) as meeting the pollutant concentrations in R18-9-1005 Table 2, Class A pathogen reduction in R18-9-1006, and one of the vector attraction reduction requirements in subsections R18-9-1010(A)(1) through R18-9-1010(A)(8).
- ~~17-18.~~ “Feed crops” means crops produced for animal consumption.
- ~~18-19.~~ “Fiber crops” means crops grown for their physical characteristics. Fiber crops, including flax and cotton, are not produced for human or animal consumption.
- ~~19-20.~~ “Food crops” means crops produced for human consumption.
- ~~20-21.~~ “Gravel” means soil predominantly composed of rock particles that will pass through a 3-inch (75 mm) sieve and be retained on a No. 4 (4.75 mm) sieve.
- ~~21-22.~~ “Industrial wastewater” means wastewater that is generated in a commercial or industrial process.
- ~~22-23.~~ “Land application,” “apply biosolids,” or “biosolids applied to the land” means spraying or spreading biosolids on the surface of the land, injecting biosolids below the land’s surface, or incorporating biosolids into the soil to amend, condition, or fertilize the soil.
- ~~23-24.~~ “Monthly average” means the arithmetic mean of all measurements taken during a calendar month.
- ~~24-25.~~ “Municipality” means a city, town, county, district, association, or other public body, including an intergovernmental agency of two or more of the foregoing entities created by or under state law. The term includes special districts such as a water district, sewer district, sanitary district, utility district, drainage district, or similar entity that has as one of its principal responsibilities, the treatment, transport, use, or disposal of biosolids.
- ~~25-26.~~ “*Navigable waters*” means the waters of the United States as defined by section 502(7) of the clean water act (33 United States Code section 1362(7)). A.R.S. § 49-201(21)
- ~~26-27.~~ “Other container” means a bucket, bin, box, carton, trailer, pickup truck bed, or a tanker vehicle or an open or closed receptacle with a load capacity of 1.102 short tons or one metric ton or less.
- ~~27-28.~~ “Pathogen” means a disease-causing organism.
- ~~28-29.~~ “*Person*” means an individual, employee, officer, managing body, trust, firm, joint stock company, consortium, public or private corporation, including a government corporation, partnership, association or state, a political subdivision of this state, a commission, the United States government or a federal facility, interstate body or other entity. A.R.S. § 49-201(26)
- ~~29-30.~~ “Person who prepares biosolids” means the person who generates biosolids during the treatment of domestic sewage in a treatment works, packages biosolids, or derives a new product from biosolids either through processing or by combining it with another material, including blending several biosolids together.
- ~~30-31.~~ “pH” means the logarithm of the reciprocal of the hydrogen ion concentration.
- ~~31-32.~~ “Pollutant” means an organic substance, an inorganic substance, a combination of organic and inorganic substances, or a pathogenic organism that, after release into the environment and upon exposure, ingestion, inhalation, or assimilation into an organism, either directly from the environment or indirectly by ingestion through the food chain, could cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions (including malfunction in reproduction), or physical deformities in either organisms or reproduced offspring.
- ~~32-33.~~ “Pollutant limit” means:
- a. A numerical value that describes the quantity of a pollutant allowed in a unit of biosolids such as milligrams per kilogram of total solids,
 - b. The quantity of a pollutant that can be applied to a unit area of land such as kilograms per hectare, or
 - c. The volume of biosolids that can be applied to a unit area of land such as gallons per acre.
- ~~33-34.~~ “Privately owned treatment works” means a device or system owned by a non-governmental entity used to treat, recycle, or reclaim, either domestic sewage or a combination of domestic sewage and industrial waste that is generated off-site.
- ~~34-35.~~ “Public contact site” means a park, sports field, cemetery, golf course, plant nursery, or other land with a high potential for public exposure to biosolids.
- ~~35-36.~~ “Reclamation” means the use of biosolids to restore or repair mining or construction sites, landfill caps, or other drastically disturbed land.
- ~~36-37.~~ “Responsible official” means a principal corporate officer, general partner, proprietor, or, in the case of a municipality, a principal executive official or any duly authorized agent.
- ~~37-38.~~ “Runoff” means rainwater, leachate, or other liquid that drains over any part of a land surface and runs off of the land surface.
- ~~38-39.~~ “Sand” means soil that contains more than 85% grains in the size range that will pass through a No. 4 (4.75 mm) sieve and be retained on a No. 200 (0.075 mm) sieve.

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40. “Sewage sludge”:

- (a) Means solid, semisolid or liquid residue that is generated during the treatment of domestic sewage in a treatment works.
- (b) Includes domestic septage, scum or solids that are removed in primary, secondary or advanced wastewater treatment processes, and any material derived from sewage sludge.
- (c) Does not include ash that is generated during the firing of sewage sludge in a sewage sludge incinerator or grit and screenings that are generated during preliminary treatment of domestic sewage in a treatment works. A.R.S. § 49-255(6)

39-41. “Sewage sludge unit” means land on which only sewage sludge is placed for final disposal. This does not include land on which sewage sludge is either stored or treated. Land does not include navigable waters.

40-42. “Specific oxygen uptake rate (SOUR)” means the mass of oxygen consumed per unit time per unit mass of total solids (dry-weight basis) in biosolids.

41-43. “Store biosolids or storage of biosolids” means the temporary holding or placement of biosolids on land before land application.

42-44. “Surface disposal site” means an area of land that contains one or more active sewage sludge units.

43-45. “Ton” means a net weight of 2000 pounds and is known as a short ton.

44-46. “Total solids” means the biosolids material that remains when sewage sludge is dried at 103° C to 105° C.

45-47. “Treatment of biosolids” means the thickening, stabilization, dewatering, and other preparation of biosolids for land application. Storage is not a treatment of biosolids.

46-48. “Unstabilized solids” means the organic matter in biosolids that has not been treated or reduced through an aerobic or anaerobic process.

47-49. “Vectors” means rodents, flies, mosquitoes, or other organisms capable of transporting pathogens.

48-50. “Volatile solids” means the amount of total solids lost when biosolids are combusted at 550° C in the presence of excess air.

49-51. “Wetlands” means those areas that are inundated or saturated by surface water or groundwater at a frequency and duration to support, and do under normal circumstances support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, cienegas, tinajas, and similar areas.

R18-9-1002. Applicability and Prohibitions

A. This Article applies to ~~any person who~~:

1. Any person who:

- 1-a. Prepares biosolids for land application or disposal in a sewage sludge unit,
- 2 b. Transports biosolids for land application or disposal in a sewage sludge unit,
- 3-c. Applies biosolids ~~for soil amendment or disposes of biosolids in a sewage sludge unit, or to the land,~~
- d. Owens or operates a sewage sludge unit, or,
- 4-e. Owens or leases land to which biosolids are applied or placed for disposal in a sewage sludge unit.

2. Biosolids applied to the land or placed on a surface disposal site,

3. Land where biosolids are applied, and

4. A surface disposal site.

B. The land application of biosolids in a manner consistent with this Article is exempt from the requirements of the aquifer protection program established under A.R.S. Title 49, Chapter 2, Article 3 and 18 A.A.C. 9, Articles 1, 2, and 3.

C. Except as provided in subsection (D), the land application of biosolids in a manner that is not consistent with Articles 9 and 10 of this Chapter is prohibited.

D. The Department may permit the land application of biosolids in a manner that differs from the requirements in R18-9-1007 and R18-9-1008 if the land application is permitted under the aquifer protection permit program established under A.R.S. Title 49, Chapter 2, Article 3, and 18 A.A.C. 9, Articles 1, 2, and 3.

E. Surface disposal site.

1. Any person who prepares biosolids that are placed in a sewage sludge unit, or places biosolids in a sewage sludge unit, or who owns or operates a biosolids surface disposal site shall comply with 40 CFR 503, Subpart C, which is incorporated by reference in R18-9-A905(A)(9), and

- a. The pathogen reduction requirements in R18-9-1006, and
- b. The vector attraction reduction requirements in R18-9-1010.

2. In addition to the requirements under subsection (E)(1), any person who owns or operates a biosolids surface disposal site shall apply for, and obtain, a permit under 18 A.A.C. 9, Articles 1 and 2.

F. A person shall not apply bulk biosolids to the land or place bulk biosolids in a surface disposal site if the biosolids are likely to adversely affect a threatened or endangered species listed under section 4 of the Endangered Species Act or its designated critical habitat.

F.G. The incineration of biosolids is prohibited.

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R18-9-1003. General Requirements

- A. A person shall not use or transport biosolids, or apply biosolids to land or place biosolids on a surface disposal site in Arizona, except as established in this Article.
- B. The management practices in R18-9-1007 and R18-9-1008 do not apply if biosolids are exceptional quality biosolids.
- C. The applicator shall obtain, submit to the Department, and maintain the necessary information needed to comply with the requirements of this Article.
- D. The applicator shall not receive bulk biosolids without prior written confirmation of the filing of a "Request for Registration" under R18-9-1004.
- E. The land owner or lessee of land on which bulk biosolids, that are not exceptional quality biosolids, have been applied shall notify any subsequent land owner and lessee of all previous land applications of biosolids and shall disclose any site restrictions listed in R18-9-1009 that are in effect at the time the property is transferred.
- F. A person who prepares biosolids shall ensure that the applicable requirements in this Article are met when the biosolids are applied to the land or placed on a surface disposal site.
- G. When necessary to protect public health and the environment from any reasonably anticipated adverse effect of a pollutant in the biosolids, the Department may impose requirements for the use or disposal of biosolids, including exceptional quality biosolids, in addition to, or more stringent than, the requirements in this Article. The Department shall notify the preparer, applier, or land owner of these requirements by letter and include the justification for the requirements and the length of time or applicability for the requirements.

R18-9-1004. Applicator Registration, Bulk Biosolids

- A. Any person intending to land-apply bulk biosolids in Arizona shall submit, on a form provided by the Department, a completed "Request for Registration."
- B. An applicator shall not engage in land application of bulk biosolids, unless the applicator has obtained a prior written acknowledgment of the request for registration from the Department.
- C. The Request for Registration for all biosolids, except exceptional quality biosolids shall include:
 - 1. The name, address, and telephone number of the applicator and any agent of the applicator;
 - 2. The name and telephone number of a primary contact person who has specific knowledge of the land application activities of the applicator;
 - 3. Whether the applicator holds a NPDES or AZPDES permit, and, if so, the permit number;
 - 4. The identity of the person, if different from the applicator, including the NPDES or AZPDES permit number, who will prepare the biosolids for land application; and
 - 5. The following information, unless the information is already on file at the Department as part of an approved land application plan, for each site on which application is anticipated to take place:
 - a. The name, mailing address, and telephone number of the land owner and lessee, if any;
 - b. The physical location of the site by county;
 - c. The legal description of the site, including township, range, and section, or latitude and longitude at the center of each site;
 - d. The number of acres or hectares at each site to be used;
 - e. Except for sites described in ~~R18-9-1005(C)(3)~~ R18-9-1005(D)(2)(c), background concentrations of the pollutants listed in Table 4 of R18-9-1005 from representative soil samples;
 - f. The location of any portion of the site having a slope greater than 6%; and
 - g. Public notice. Proof of placement of a public notice announcing the potential use of the site for the application of biosolids when a site has not previously received biosolids, or when a site has not been used for land application for at least three consecutive years.
 - i. The notice shall appear at least once each week for at least two consecutive weeks in the largest newspaper in general circulation in the area in which the site is located.
 - ii. If a site is not used for land application for at least three consecutive years, the applicator shall renote the site following the process described in subsection (C)(5)(g)(i) before its reuse.
- D. The Request for Registration for exceptional quality biosolids shall include the information in subsections (C)(1) through (C)(4).
- E. A responsible official of the applicator shall sign the Request for Registration.
- F. The Department shall mail a written acknowledgment of a Request for Registration, including supplemental requests, within 15 business days of receipt of the request.
- G. An applicator wishing to use a site that has not been identified in a Request for Registration shall file a supplemental request with the Department before using the new site. Public notice requirements under R18-9-1004(C)(5)(g) apply.

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R18-9-1005. Pollutant Concentrations

- A. A person shall not apply biosolids with pollutant concentrations that exceed any of the ceiling concentrations established in Table 1. ~~Biosolids placed on public contact sites with a low potential for child occupancy are exempt from the selenium limit in Table 1.~~
- B. A person shall not apply ~~bulk~~ biosolids sold or given away in a bag or other container that are not exceptional quality biosolids to a site if any annual pollutant loading rate in Table 3 will be exceeded. A person shall determine annual application rates using the methodology established in Appendix A.
- C. A person shall not apply bulk biosolids to a lawn or garden that are not exceptional quality biosolids.
- ~~C.D.A~~ Except for sites covered under subsection (C), a person shall not apply bulk biosolids that are not exceptional quality biosolids to a site if:
1. The pollutant concentrations exceed the levels in Table 2, or
 2. ~~any~~ Any cumulative pollutant loading rate in Table 4 will be exceeded. A person shall determine compliance with the site cumulative pollutant loading rates using the following:
 - ~~1.a.~~ By calculating all known biosolids application events and information relevant to a site since September 13, 1979.
 - ~~2.b.~~ By calculating the existing cumulative level of the pollutants established in Table 4 using actual analytical data from the application events or if actual analytical data from application events before April 1996 are not available, background concentrations determined by taking representative soil samples of the site, if it is known that the site received biosolids before April 1996.
 - ~~3.c.~~ Background soil tests are not required for those sites that have not received biosolids before April 23, 1996.
 4. ~~Biosolids placed on public contact sites with a low potential for child occupancy are exempt from the selenium limit in Table 4.~~

Table 1. Ceiling Concentrations

Pollutant	Ceiling concentrations (milligrams per kilogram) (1)
Arsenic	75.0
Cadmium	85.0
Chromium	3000.0
Copper	4300.0
Lead	840.0
Mercury	57.0
Molybdenum	75.0
Nickel	420.0
Selenium	100.0
Zinc	7500.0

(1) Dry-weight basis.

Table 2. Monthly Average Pollutant Concentrations

Pollutant	Concentration limits (milligrams per kilogram) (1)
Arsenic	41.0
Cadmium	39.0
Copper	1500.0
Lead	300.0
Mercury	17.0
Nickel	420.0
Selenium	100.0
Zinc	2800.0

(1) Dry-weight basis.

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Table 3. Annual Pollutant Loading Rates

Pollutant	Annual pollutant loading rates (in kilograms per hectare)
Arsenic	2.0
Cadmium	1.9
Copper	75.0
Lead	15.0
Mercury	0.85
Nickel	21.0
Selenium	5.0
Zinc	140.0

Table 4. Cumulative Pollutant Loading Rates

Pollutant	Cumulative pollutant loading rates (in kilograms per hectare)
Arsenic	41.0
Cadmium	39.0
Copper	1500.0
Lead	300.0
Mercury	17.0
Nickel	420.0
Selenium	100.0
Zinc	2800.0

R18-9-1006. Class A and Class B Pathogen Reduction Requirements

- A.** An applicator shall ensure that all biosolids applied to land meet Class A or Class B pathogen reduction requirements at the time the biosolids are land applied.
- B.** Biosolids that are sold or given away in a bag or other container, or that are applied on a lawn or home garden, shall meet the Class A pathogen reduction requirements established in subsection (D).
- C.** Land on which biosolids with Class B pathogen reduction requirements are applied is subject to the use restrictions established in R18-9-1009.
- D.** Biosolids satisfy the Class A pathogen reduction requirements when the density of fecal coliform is less than 1000 Most Probable Number per gram of total solids (dry-weight basis), or the density of *Salmonella sp.* bacteria is less than three Most Probable Number per four grams of total solids (dry-weight basis), and any one of the following alternative pathogen treatment options is used:

- 1. Alternative 1. The pathogen treatment process meets one of the following time and temperature requirements:
 - a. When the percent solids of the biosolids are 7% or greater, the temperature of the biosolids shall be held at 50° C or higher for at least 20 minutes. The temperature and time period is determined using the equation in subsection (D)(1)(b), except when small particles of the biosolids are heated by either warmed gases or an immiscible liquid;
 - b. When the percent solids of the biosolids are is 7% or greater, and small particles of the biosolids are heated by either warmed gases or an immiscible liquid, a temperature of 50° C or higher shall be held for 15 seconds or longer. The temperature and time period is determined using the following equation:

$$D = \frac{131,700,000}{10^{[0.1400t]}}$$

D = time in days and
 t = temperature in degrees Celsius;

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- c. When the percent solids of the biosolids are less than 7%, the temperature of the biosolids is 50° C or higher and the time period is 30 minutes or longer. The temperature and time period shall be determined using the following equation:
- $$D = \frac{50,070,000}{10^{[0.1400t]}}$$
- D = time in days and
t = temperature in degrees Celsius; or
- d. When the percent solids of the biosolids are less than 7%, and the time of heating is at least 15 seconds, but less than 30 minutes, the time and temperature is determined using the following equation:
- $$D = \frac{131,700,000}{10^{[0.1400t]}}$$
- D = time in days; and
t = temperature in degrees Celsius.
2. Alternative 2. The pathogen treatment process meets all the following parameters:
- The pH of the quantity of biosolids treated is raised to 12 or higher and held at least 72 hours;
 - During the period that the pH is above 12, the temperature of the biosolids is held above 52° C for at least 12 hours; and
 - At the end of the 72-hour period during which the pH is above 12, the biosolids are air dried to achieve a percent solids in the biosolids greater than 50%.
3. ~~Alternative 3. If the following are met~~ The following conditions are met:
- The biosolids, before pathogen treatment and until the next monitoring event, have an enteric virus density less than one plaque-forming unit for four grams of total solids (dry-weight basis);
 - The biosolids, before pathogen treatment and until the next monitoring event, have a viable helminth ova density less than one for four grams of total solids (dry-weight basis); and
 - Once the density requirements in subsections (D)(3)(a) and (D)(3)(b) are consistently met after pathogen treatment and the values and ranges of the pathogen treatment process used are documented, the biosolids continue to be Class A with respect to enteric viruses and viable helminth ova when the values for the pathogen treatment process operating parameters are consistent with the previously documented values or ranges of values.
4. Alternative 4. ~~If the~~ The following additional requirements are met at the time the biosolids are used or disposed or at the time the biosolids are prepared for sale or given away in a bag or other container for application to the land:
- The biosolids have an enteric virus density less than one plaque-forming unit for four grams of total solids (dry-weight basis), and
 - The biosolids have a viable helminth ova density less than one for four grams of total solids (dry-weight basis).
5. Alternative 5. Composting.
- Use either the within-vessel or the static-aerated-pile composting method, maintaining the temperature of the biosolids at 55° C or higher for three days; or
 - Use the windrow composting method, maintaining the temperature of the biosolids at 55° C or higher for at least 15 days. The windrow shall be turned at least five times when the compost is maintained at 55° C or higher.
6. Alternative 6. Heat drying. The biosolids are dried by direct or indirect contact with hot gases to reduce the moisture content to 10% or lower by weight. During the process:
- The temperature of the sewage sludge particles shall exceed 80° C, or
 - The wet bulb temperature of the gas as the biosolids leave the dryer shall exceed 80° C.
7. Alternative 7. Heat treatment. The quantity of liquid biosolids treated are heated to a temperature of 180° C or higher for at least 30 minutes.
8. Alternative 8. Thermophilic aerobic digestion. Liquid biosolids are agitated with air or oxygen to maintain aerobic conditions and the mean cell residence time of the biosolids is 10 days at 55° to 60° C.
9. Alternative 9. Beta ray irradiation. Biosolids are irradiated with beta rays from an accelerator at dosages of at least 1.0 megarad at room temperature (approximately 20° C).
10. Alternative 10. Gamma ray irradiation. Biosolids are irradiated with gamma rays from certain isotopes, such as ⁶⁰Cobalt and ¹³⁷Cesium at dosages of at least 1.0 megarad at room temperature (approximately 20° C).
11. Alternative 11. Pasteurization. The temperature of the biosolids is maintained at 70° C or higher for at least 30 minutes.
12. Alternative 12. The Director shall approve another process if the process is equivalent to a Process to Further Reduce Pathogens specified in subsections (D)(5) through (D)(11), as determined by the EPA Pathogen Equivalency Committee.

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- E.** Biosolids satisfy the Class B pathogen reduction requirements when the biosolids meet any one of the following options:
1. Alternative 1. The geometric mean of the density of fecal coliform in seven representative samples is less than either 2,000,000 Most Probable Number per gram of total solids (dry-weight basis), or 2,000,000 colony forming units per gram of total solids (dry-weight basis);
 2. Alternative 2. Air drying. The biosolids are dried on sand beds or paved or unpaved basins for at least 3 months. During at least two of the three months, the ambient average daily temperature is above 0° C;
 3. Alternative 3. Lime stabilization. Sufficient lime is added to the biosolids to raise the pH of the biosolids to 12 after at least two hours of contact;
 4. Alternative 4. Aerobic digestion. The biosolids are agitated with air or oxygen to maintain aerobic conditions for a specific mean cell residence time at a specific temperature between 40 days at 20° C and 60 days at 15° C;
 5. Alternative 5. Anaerobic digestion. The biosolids are treated in the absence of air for a specific mean cell residence time at a specific temperature between 15 days at 35° C to 55° C and 60 days at 20° C;
 6. Alternative 6. Composting. Using the within-vessel, static-aerated-pile or windrow composting methods, the temperature of the biosolids is raised to 40° C or higher for five consecutive days. For at least four hours during the five days, the temperature in the compost pile exceeds 55° C; or
 7. Alternative 7. The Director shall approve another process if it is equivalent to a Process to Significantly Reduce Pathogens specified in subsections (E)(2) through (E)(6), as determined by the EPA Pathogen Equivalency Committee.

R18-9-1007. Management Practices and General Requirements

- A.** An applicator of bulk biosolids that are not exceptional quality biosolids shall comply with the following management practices at each land application site, except a site where biosolids are applied for reclamation. The applicator shall not:
1. Apply biosolids to soil with a pH less than 6.5 at the time of the application, unless the biosolids are treated under one of the procedures in subsections R18-9-1006(D)(2), R18-9-1006(E)(3), or R18-9-1010(A)(6), or the soil and biosolids mixture has a pH of 6.5 or higher immediately after land application;
 2. Apply biosolids to land with slopes greater than 6%, unless the site is operating under an AZPDES permit or a permit issued under section 402 of the Clean Water Act (33 U.S.C. 1342);
 3. Apply biosolids to land under the following conditions:
 - a. Biosolids with Class A pathogen reduction. If the depth to groundwater is five feet (1.52 meters) or less;
 - b. Biosolids with Class B pathogen reduction.
 - i. If the depth to groundwater is 10 feet (3.04 meters) or less; or
 - ii. To gravel, coarse or medium sands, and sands with less than 15% coarse fragments, if the depth to groundwater is 40 feet (12.2 meters) or less from the point of application of biosolids;
 4. Apply biosolids to land that is 32.8 feet (10 meters) or less from navigable waters;
 5. Store or apply biosolids closer than 1000 feet (305 meters) from a public or semi-public drinking water supply well and no closer than 250 feet (76.2 meters) from any other water well;
 6. Store or apply biosolids within 25 feet (7.62 meters) of a public right-of-way or private property line unless the applicator receives permission to apply biosolids from the land owner or lessee of the adjoining property;
 7. Apply biosolids at an application rate greater than the agronomic rate of the vegetation or crop grown on the site;
 8. Apply domestic septage or any other biosolids with less than 10% solids at a rate that exceeds the annual application rate, calculated in gallons per acre for a 365-day period by dividing the amount of nitrogen needed by the crop or vegetation grown on the land, in pounds per acre per 365-day period, by 0.0026;
 9. Apply bulk biosolids to land that is flooded, frozen, or snow-covered, so that the bulk biosolids enter a wetland or other navigable waters, except as provided in an AZPDES permit or a permit issued under section 402 of the Clean Water Act (33 U.S.C. 1342);
 10. Apply any additional biosolids before a crop is grown on the site if the site has received biosolids containing nitrogen at the equivalent of the agronomic rate appropriate for that crop;
 11. Exceed the irrigation needs of the crop of an application site; and
 12. To minimize odors, apply biosolids within 1,000 feet (305 meters) of a dwelling unless the biosolids are injected or incorporated into the soil within 10 hours of being applied or store biosolids within 1000 feet (305 meters) of a dwelling.
- B.** If biosolids are placed in a bag or other container, the person who prepares the biosolids shall distribute a label or information sheet to the person receiving the material. This label or information sheet shall, at a minimum, contain the following information:
1. The identity and address of the person who prepared the biosolids;
 2. Instructions on the proper use of the material, including agronomic rates and an annual application rate that ensures that the annual pollutant rates established in R18-9-1005 are not exceeded; and
 3. A statement that application of biosolids to the land shall not exceed application rates described in the instructions on the label or information sheet.

R18-9-1008. Management Practices, Application of Biosolids to Reclamation Sites

- A.** An applicator of bulk biosolids that are not exceptional quality biosolids shall comply with the following management practices at each land application site where the biosolids are applied for reclamation. The applicator shall not:
1. Apply biosolids unless the soil and biosolids mixture has a pH of 5.0 or higher immediately after land application;
 2. Apply biosolids to land with slopes greater than 6% unless:
 - a. The site is operating under an AZPDES permit or a permit issued under section 402 (33 U.S.C. 1342) or 404 (33 U.S.C. 1344) of the Clean Water Act;
 - b. The site is reclaimed as specified under A.R.S. Title 27, Chapter 5, and controls are in place to prevent runoff from leaving the application area; or
 - c. Runoff from the site does not reach navigable waters;
 3. Apply biosolids to land under the following conditions:
 - a. Biosolids with Class A pathogen reduction. To land if the depth to groundwater is 5 feet (1.52 meters) or less;
 - b. Biosolids with Class B pathogen reduction.
 - i. To land if the depth to groundwater is 10 feet (3.04 meters) or less; and
 - ii. To gravel, coarse or medium sands, and sands with less than 15% coarse fragments if the depth to groundwater is 40 feet (12.2 meters) or less from the point of application of biosolids;
 4. Apply biosolids to land that is 32.8 feet (10 meters) or less from navigable waters;
 5. Store or apply biosolids closer than 1000 feet (305 meters) from a public or semi-public drinking water supply well, unless the applicator justifies and the Department approves a shorter distance, and apply biosolids closer than 250 feet (76.2 meters) from any other water well;
 6. Store or apply biosolids within 1,000 feet (305 meters) of a public right-of-way or private property line unless the applicator receives permission to apply biosolids from the land owner or lessee of the adjoining property;
 7. Exceed a total of 150 dry tons per acre to any portion of a reclamation site if biosolids are applied;
 8. Apply biosolids with less than 10% solids;
 9. Apply bulk biosolids to land that is flooded, frozen, or snow-covered so that the bulk biosolids enter a wetland or other navigable waters, except as provided in an AZPDES permit or a permit issued under section 402 (33 U.S.C. 1342) or 404 (33 U.S.C. 1344) of the Clean Water Act;
 10. Apply more water than necessary to control dust and establish vegetation; and
 11. Apply biosolids within 1,000 feet (305 meters) of a dwelling unless the biosolids are injected or incorporated into the soil within 10 hours of being applied or store biosolids within 1000 feet (305 meters) of a dwelling.
- B.** The requirements of R18-9-1007(B) apply if biosolids are used to reclaim a site.

R18-9-1011. Transportation

- A.** A transporter of bulk biosolids into and within Arizona shall use covered trucks, trailers, rail-cars, or other vehicles that are leakproof.
- B.** A transporter of bulk biosolids into and within Arizona shall comply with the requirements in A.A.C. R18-8-612 ~~or R18-13-310.~~
- C.** A transporter of biosolids shall clean any truck, trailer, rail-car, or other vehicle used to transport biosolids to prevent odors or insect breeding. A transporter shall clean any tank vessel used to transport commercial or industrial septage, or restaurant grease-trap wastes, which is used to haul domestic septage, before loading the domestic septage to ensure that mixing of wastes does not occur.
- D.** If bulk biosolids are spilled while being transported, the transporter shall:
1. Immediately pick up any spillage, including any visibly discolored soil, unless otherwise determined by the Department on a case-by-case basis;
 2. Within 24 hours after the spill, notify the Department of the spill and submit written notification of the spill within seven days. The written notification shall include the location of the spill, the reason it occurred, the amount of biosolids spilled, and the steps taken to clean up the spill.

R18-9-1013. Recordkeeping

- A.** A person who prepares biosolids shall collect and retain the following information for at least five years:
1. The date, time, and method used for each sampling activity and the identity of the person collecting the sample;
 2. The date, time, and method used for each sample analysis and the identity of the person conducting the analysis;
 3. The results of all analyses of pollutants regulated under R18-9-1005 and organic and ammonium nitrogen to comply with R18-9-1007(A)(7);
 4. The results of all pathogen density analyses and applicable descriptions of the methods used for pathogen treatment in R18-9-1006;
 5. A description of the methods used, if any, and the operating values and ranges observed in any pre-land application, vector attraction reduction activities required in R18-9-1010(A); and

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6. The records described in subsections (A)(1) through (A)(5) accompanied by the following certification statement signed by a responsible official of the person who prepares the biosolids:
“I certify, under penalty of law, that the pollutant analyses and the description of pathogen treatment and vector attraction reduction activities have been made under my direction and supervision and under a system designed to ensure that qualified personnel properly gather and evaluate the information used to determine whether the applicable biosolids requirements have been met. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment.”
- B.** An applicator of bulk biosolids, except exceptional quality biosolids, shall collect the following information for each land application site, and, except as indicated in subsection (B)(6), shall retain this information for at least five years:
 1. The location of each site, by either street address or latitude and longitude;
 2. The number of acres or hectares;
 3. The date and time the biosolids were applied;
 4. The amount of biosolids (in dry metric tons);
 5. The biosolids loading rates for domestic septage and other biosolids with less than 10% solids in tons or kilograms of biosolids per acre or hectare and in gallons per acre and the biosolids loading rates for other biosolids in tons or kilograms of biosolids per acre or hectare;
 6. The cumulative pollutant levels of each regulated pollutant (in tons or kilograms per acre or hectare). The applicator shall retain these records permanently;
 7. The results of all pathogen density analyses and applicable descriptions of the methods used for pathogen treatment in R18-9-1006;
 8. A description of the activities and measures used to ensure compliance with the management practices in R18-9-1007 and R18-9-1008, including information regarding the amount of nitrogen required for the crop grown on each site;
 9. If vector attraction reduction was not met by the person who prepares the biosolids, a description of the vector attraction reduction activities used by the applicator to ensure compliance with the requirements in R18-9-1010;
 10. A description of any applicable site restriction imposed by in R18-9-1009, if biosolids with Class B pathogen reduction have been applied, and documentation that the applicator has notified the land owner and lessee of these restrictions;
 11. The records described in subsections (B)(1) through (B)(8) accompanied by the following certification statement signed by a responsible official of the applicator of the biosolids:
“I certify, under penalty of law, that the information and descriptions, have been made under my direction and supervision and under a system designed to ensure that qualified personnel properly gather and evaluate the information used to determine whether the applicable biosolids requirements have been met. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment.”
 12. The information in subsections (A)(1) through (A)(6) if the person who prepares the biosolids is not located in this state.
- C.** All records required for retention under this Section are subject to periodic inspection and copying by the Department.
- D.** If there is unresolved litigation, including enforcement, concerning the activities documented by the records required in this Section, the period of record retention shall be extended pending final resolution of the litigation.

R18-9-1014. Reporting

- A.** A person who prepares biosolids for application shall provide the applicator written notification of ~~the pollutant concentrations as necessary for the applicator to comply with R18-9-1003(C), and necessary information to comply with this Article including the concentration of pollutants listed in R18-9-1005 and the concentration of nitrogen in the biosolids.~~ The person who prepares biosolids for surface disposal shall comply with 40 CFR 503.28 which is incorporated by reference in R18-9-A905(A)(9).
- B.** A transporter shall report spills to the Department under R18-9-1011(D).
- C.** A bulk applicator of biosolids other than exceptional quality biosolids shall provide the land owner and lessee of land application sites with information on the ~~pollutant concentrations of the pollutants listed in R18-9-1005~~ and loading rates of biosolids applied to that site, and any applicable site restrictions under R18-9-1009.
- D.** A bulk applicator of biosolids other than exceptional quality biosolids shall report to the Department if 90% or more of any cumulative pollutant loading rate has been used at a site.
- E.** On February 19 of each year, any person land applying bulk biosolids that are not exceptional quality biosolids shall, by letter or on a form provided by the Department, report to the Department the following applicable information for the previous calendar year:
 1. The actual sites used; and
 2. For each site used, the following information:
 - a. The amount of biosolids applied (in tons or kilograms per acre or hectare);
 - b. The application loading rates (in tons or kilograms per acre or hectare, and gallons per acre for domestic septage);

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- c. The ~~pollutant~~ concentrations of the pollutants listed in R18-9-1005 (in milligrams per kilogram of biosolids on a dry weight basis);
 - d. The pathogen treatment methodologies used during the year and the results; and
 - e. The vector attraction reduction methodologies used during the year and the results.
- F.** On February 19 of each year, a person preparing ~~exceptional quality~~ biosolids in a Class I Sludge Management Facility, POTW with a design flow rate equal to or greater than one million gallons per day, or POTW that serves 10,000 people or more, which are applied to land, shall, by letter or on a form provided by the Department, report to the Department all the following applicable information regarding their activities during the previous calendar year:
On February 19 of each year, a person preparing ~~exceptional quality~~ biosolids that is applied to land shall, by letter or on a form provided by the Department, report to the Department all the following applicable information regarding their activities during the previous calendar year:
- 1. The amount of biosolids received if the preparer purchased or received the biosolids from another preparer or source;
 - 2. The amount of ~~exceptional quality~~ biosolids produced (tons or kilograms);
 - 3. The amount of ~~exceptional quality~~ biosolids distributed;
 - 4. The ~~pollutant~~ concentrations of the pollutants listed in R18-9-1005 (in milligrams per kilogram of biosolids on a dry-weight basis);
 - 5. The pathogen treatment methodologies used during the year, including the results; and
 - 6. The vector attraction reduction methodologies used during the year, including the results.
- G.** All annual self-monitoring reports shall contain the following certification statement signed by a responsible official:
“I certify, under penalty of law, that the information and descriptions, have been made under my direction and supervision and under a system designed to ensure that qualified personnel properly gather and evaluate the information used to determine whether the applicable biosolids requirements have been met. I am aware that there are significant penalties for false certification including the possibility of fine and imprisonment.”