

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 12. NATURAL RESOURCES

CHAPTER 5. STATE LAND DEPARTMENT

PREAMBLE

1. Sections Affected

R12-5-505
R12-5-505
R12-5-506
R12-5-506
R12-5-516
R12-5-534

Rulemaking Action

Repeal
New Section
Repeal
New Section
Repeal
Repeal

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

Authorizing statute: A.R.S. § 37-132(A)(1)

Implementing statute: A.R.S. § 37-284

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

Notice of Rulemaking Docket Opening: 4 A.A.R. 1232, May 29, 1998

Notice of Rulemaking Docket Opening: 5 A.A.R. 4582, December 10, 1999

Notice of Rulemaking Docket Opening: 9 A.A.R. 846, March 7, 2003

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

Name: Richard B. Oxford, Director
Land Information, Title & Transfer Division

Address: Arizona State Land Department
1616 W. Adams
Phoenix, AZ 85007

Telephone: (602) 542-4602

Fax: (602) 542-5223

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

In 1998, the Arizona Legislature amended A.R.S. § 37-284 which enabled the State Land Commissioner to clarify the procedure in considering conflicting applications, to define equities to be considered, to require an applicant to submit a statement of equities and to require an applicant to indicate whether the applicant is offering rental as part of their equity statement, and, if so, the amount. In addition, the legislation established deadlines by which conflicting applications would be accepted by the Commissioner on expiring leases for State Trust land. (Laws 1998, Ch. 184 § 5, eff. May 28, 1998).

The rule also proposes to establish a deadline for filing a conflicting application on unleased State Trust lands and provide a time period outside the established deadline that an application would be rejected.

Arizona Administrative Register
Notices of Proposed Rulemaking

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 Department proposes to adopt rules that address the processing of conflicting applications when two or more applicants apply to lease or use State Trust land (surface estate only) for the same purpose.

The Department maintains 9,475 active leases, permits, rights of ways and sales contracts on 9.3 million acres of the Trusts' surface estate. Of these contracts, 2,674 leases and permits (28%), categorized as Grazing, Commercial, Agriculture, Special Use Permits, U.S. Government and Homesite encompassing 8.9 million acres (96%) are directly affected by the "conflict application" rule adoption. Collectively, these leases and permits earned \$18.6 million in FY02. The Department receives approximately 450 potentially conflicting applications in these categories annually. A review of Departmental records for the past 25 years reveals an average of nine conflicting application cases are processed by the Department each year.

The requirements of the proposed rule apply equally to each applicant. Costs to the applicant may include an application fee, clerical costs, staff time, and consultant or legal fees to prepare the application and statement of equity. Additional costs may occur if the applicant files an appeal or elects to litigate the Departments' decision regarding a conflicting application issue. Other costs to the applicant may also include reimbursement to a former lessee for an approved non-removable improvement.

Generally, the Department's costs to process conflicting applications are proportional to the number and complexity of the conflicting application issue. Costs to the Department include staff time to review an application and supporting data. These costs will increase if Departmental decisions regarding a conflicting application case is appealed or litigated.

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: Richard B. Oxford, Director
Land Information, Title & Transfer Division

Address: Arizona State Land Department
1616 W. Adams
Phoenix, AZ 85007

Telephone: (602) 542-4602

Fax: (602) 542-5223

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:

No public proceeding is scheduled. A person may submit written comments to or request that an oral proceeding be held on the proposed rules by submitting the comments or a written request for hearing no later than 5:00 p.m. April 7, 2003 to the following person:

Name: Richard B. Oxford, Director
Land Information, Title & Transfer Division

Address: Arizona State Land Department
1616 W. Adams
Phoenix, AZ 85007

Telephone: (602) 542-4602

Fax: (602) 542-5223

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

Arizona Administrative Register
Notices of Proposed Rulemaking

TITLE 12. NATURAL RESOURCES

CHAPTER 5. STATE LAND DEPARTMENT

ARTICLE 5. LEASES

Section

- R12-5-505. ~~Application for Land Included Under Existing Lease or Permit~~ Time for Filing Conflicting Applications
R12-5-506. ~~Two or More Applications for Lease or Permit~~ Procedure in Processing Conflicting Applications
R12-5-516. ~~Time for Filing Conflicting Applications~~ Repealed
R12-5-534. ~~Rules of Procedure in conflicts~~ Repealed

ARTICLE 5. LEASES

R12-5-505. ~~Application for Land Included under Existing Lease or Permit~~ Time for Filing Conflicting Applications

~~Where an application for lease or permit covers land already under lease or permit for the same purposes, such application will be rejected by the Commissioner to the extent that the lands described therein are included within an existing lease or permit.~~

A. On unleased land

~~When an application is filed on unleased land, no further application for the same purpose shall be accepted by the Department after a proposed lease, permit, or right of way document has been mailed to an applicant for review and signature.~~

B. On land under lease or permit for the same purpose

~~A conflicting application will not be accepted by the Department if:~~

- ~~1. Land applied for lease or permit are already under lease or permit for the same purpose, and,~~
- ~~2. The application is not filed within the time period prescribed by statute for a conflicting application.~~

C. For permit on land under permit for the same purpose where the use is exclusive

~~An applicant must file for a permit on land for the same purpose where the use is exclusive within 60 days prior to expiration of the existing permit and prior to date of mailing of the permit to an applicant for review and signature.~~

R12-5-506. ~~Two or More Applications for Lease or Permit~~ Procedure in Processing Conflicting Applications

~~Except as otherwise provided by law or specifically by these rules and regulations, if two or more applicants apply for lease or permit on the same land for the same purpose, the Commissioner shall approve the application of the one who, after investigation or hearing by the Commissioner, appears to have the best right to such lease or permit. If it appears that none of the applicants has any right or equities superior to those of another, the Commissioner may reject and deny all applications, or he may at a stated time and after due notice to all such applicants, receive sealed bids submitted in accordance with such requirements he may make, and shall approve the application of the bidder who, in all respects, is eligible to holding a lease or permit upon the land and will pay the highest annual rental therefor, or the Commissioner may reject all bids.~~

~~If such lands are offered for bid, the Commissioner shall issue a notice for call of sealed bids, stating in said notice the time and place said sealed bids will be accepted and the minimum rental there for that will be accepted by the Commissioner. A copy of the form of lease that will be issued to the successful bidder in bidding will be enclosed with said notice, together with the written form of bid to be submitted by the successful bidder.~~

~~Said bids shall be submitted on the form enclosed in the notice, filled out and signed by the bidder, placed in an envelope addressed to the State Land Commissioner with the number of the bid on the outside thereof, together with the first year's rental at the annual rental bid. Failure to provide the annual rental amount or receipt of a check for the amount drawn on insufficient funds, will give the Commissioner the right to withdraw the bid covered by these insufficient funds. Money received from an unsuccessful bidder will be returned following award of the lease or permit. The envelope with enclosures may be delivered in person or placed in an envelope and mailed to the State Land Commissioner. No bid will be received from anyone other than the applicants named in said notice and call for sealed bids.~~

~~At the time and place stated in said notice and call for bids, the bids will be opened and publicly read by the Commissioner, or his representative, and no bid will be considered for an annual rental less than the minimum rental stated in said notice and call for sealed bids.~~

A. When two or more applicants apply for a lease or permit on the same land for the same purpose, the Department shall notify all applicants of record of the conflict of existing applications and shall require each applicant to submit a statement of equities containing the basis of their claim to the lease or permit, including their willingness to pay more than the appraised rental. The Notice of Conflicting Applications shall require each applicant to file a statement of equities with the Department and serve a copy upon the other applicants within 30 days from the date of the Department's Notice, unless the time is extended by the Department or by stipulation of the applicants. Failure of any applicant to submit a statement of equities will not preclude the Department from examining the evidence, records, or reviewing testimony from a hearing conducted under subsection (E)(2) and making a decision regarding the conflicting applications. A decision regarding the application of this rule for lease or permit shall be in the best interest of the Trust as determined by the Department.

Arizona Administrative Register
Notices of Proposed Rulemaking

- B.** The statement of equities shall be verified under oath before an officer authorized under the laws of the state of Arizona to administer an oath, or, the applicant may sign the statement of equities accompanied by a certification under penalty of perjury that the information contained in the statement of equities is to the best of the applicant's knowledge and belief, true, correct and complete.
- C.** Each applicant, within ten days from the date of receipt of the statement of equities of the conflicting applicant, may file with the Commissioner and serve upon other applicants, a response to the conflicting applicant's statement of equities.
- D.** Investigation and review may include, but is not limited to the consideration of the following factors.
1. Willingness to pay more than appraised rental,
 2. Proposed land use or land management plan that is beneficial to the Trust,
 3. Access to or control of facilities or resources necessary to accomplish proposed use,
 4. Willingness of successful applicant to reimburse owner of non-removable improvements,
 5. Stewardship,
 6. Experience associated with proposed use of land,
 7. Impact to future utility and income potential of the land under conflict,
 8. Impact to surrounding state land,
 9. Recommendations of staff, and
 10. Any other considerations in the best interest of the Trust.
- E.** After investigation and review of the statements of equities, the Department may:
1. Request additional information from an applicant;
 2. Conduct a hearing at the Department or another designated location at the earliest possible date, giving notice of time and place for hearing to all applicants;
 3. Award the lease or permit to an applicant;
 4. Reject all applications; or,
 5. Proceed to bid according to A.R.S. § 37-284.
- F.** Bid Process
1. When the Department determines to proceed to bidding, the Department shall issue a Notice of Call for Bidding. The Notice shall state the time and place bids will be accepted including the minimum rental that will be accepted. The bidders must submit a written bid to the Department by 5:00 p.m. no later than 30 days from the date of the Notice. The bids shall be made on forms provided by the Department. The Department shall only accept bid forms with original signature of the bidder. Bids may be either mailed or delivered in person to the Department. The Notice shall specify the existence of a preferred right, if any. A copy of the form of lease or permit that may be offered to the successful bidder shall be enclosed with the Notice.
 2. No bids shall be received from anyone other than the applicants named in the Notice of Call for Bidding.
 3. A bidder choosing to exercise a preferred right shall, within 15 days of the Department's issuance of the Notice of bid results, offer a bid matching the highest bid, in writing, on forms provided by the Department. Only bid forms with original signatures shall be accepted.
- G.** Nothing in this rule shall limit or diminish the jurisdiction of the Department. This rule shall not apply to oil and gas lease conflicts.

R12-5-516. Time for Filing Conflicting Applications Repealed

~~If no application for lease or permit, other than application for renewal by a prior lessee or permittee, has been filed on or before the date of the expiration of said lease or permit, no further application shall be accepted, unless the Commissioner should determine that the prior lessee or permittee does not have a preference right to renew his lease or permit or that the continued leasing of said land is not for the best interests of the state.~~

~~Where an application is filed on open land, the Commissioner shall have authority to fix the time when no further applications shall be accepted by the Commissioner. Notice of such time shall be made of record and posted in the Department.~~

R12-5-534. Rules of procedure in conflicts Repealed

~~Whenever it shall appear that two or more persons have applied for a lease or permit on the same lands, the Commissioner may notify all parties in interest of record of the conflict of such existing applications and may in such notice require of each of the applicants to furnish a statement of facts upon which the applicant bases his preferential right to such lease or permit. In such event, said notice shall require each applicant to file with the Commissioner and serve a copy upon the other applicants within 30 days from the date of such notice, unless such time is extended by the Commissioner or by stipulation of the parties, his statement of equities or claim of preferential right to lease or permit, clearly setting forth all of the grounds upon which he bases his claim to preference. Service of a copy of the statement of claim or preferential right on all parties in interest shall be made as in these rules provided, and evidence of such service shall be made within ten days from the date thereof.~~

~~In each instance the statement of claim must be verified under oath before some officer authorized under the laws of the state of Arizona to administer such oaths, or, in lieu thereof, the applicant may affix his signature to the statement of claim accom-~~

Arizona Administrative Register
Notices of Proposed Rulemaking

panied by a certification under penalty of perjury that the information contained in the statements is to the best of applicant's knowledge and belief true, correct and complete.

Each applicant within ten days from the date of the receipt of the statement of claim of the conflicting applicant may file with the Commissioner and serve upon opposite parties a responsive answer or pleading to the conflicting applicant's statement or claim of preferential right. Evidence of such service shall be filed as provided above.

In case an oral hearing is demanded by any of the conflicting applicants, such demand must be made in writing and accompany the preferential statement of equities or claim of preferential right, and a copy of said demand must be served upon the opposing applicant in the same manner and at the same time as the claim for preferential right or statement of equities are served.

Upon receipt of said statement of equities and demand for a hearing, the Commissioner shall set the matter down for hearing at his office, or such other place as he may designate, at the earliest practicable date, giving notice of said time and place for hearing to all parties in interest of record.

If no oral argument has been requested or ordered by the Commissioner, the Commissioner will determine whether anyone of the applicants has the right to the lease or permit upon such lands based upon the equities or preferential rights to lease or permit submitted by the various parties to the proceedings and upon the record before the Commissioner.

If the Commissioner should find from the evidence submitted to him that none of the applicants has a preference right to lease or permits, he will notify them of such fact and may deny all applications of record or offer said lease or permit to the highest bidder among the applicants on the basis of sealed bids submitted to the Commissioner in accordance with these rules and regulations.

Failure of any applicant to submit his statement of equities or claim of preferential right as above prescribed or to appear at the hearing set therefor will not preclude the Commissioner from examining the evidence and records or from hearing testimony submitted by the other conflicting applicants and making his decision thereon.

Nothing herein shall be construed to limit or diminish the jurisdiction of the Commissioner.

This rule shall not apply to oil and gas lease conflicts.

NOTICE OF PROPOSED RULEMAKING

TITLE 17. TRANSPORTATION

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

PREAMBLE

- | | |
|---|--|
| <u>1. Sections Affected</u>
R17-4-502 | <u>Rulemaking Action</u>
Amend |
| <u>2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):</u>
Authorizing statute: A.R.S. § 28-366
Implementing statutes: A.R.S. §§ 28-3005, 28-2052, 28-3153, 28-3158, 28-3159, 28-3164, 28-3171, 28-3172, 28-3306, 28-3314, and 28-3315 | |
| <u>3. A list of all previous notices appearing in the Register addressing the proposed rule:</u>
Notice of Rulemaking Docket Opening: 9 A.A.R. 476, February 14, 2003 | |
| <u>4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:</u> | |
| Name: | George R. Pavia, Department Rules Supervisor |
| Address: | Administrative Rules Unit
Department of Transportation, Mail Drop 507M
3737 N. 7th Street, Suite 160
Phoenix, AZ 85014-5079 |
| Telephone: | (602) 712-8446 |
| Fax: | (602) 241-1624 |
| E-mail: | gpavia@dot.state.az.us |

Arizona Administrative Register
Notices of Proposed Rulemaking

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 agency will amend its motor vehicle safe operation medical provisions rule to include a new subsection that protects the confidentiality of applicant or licensee information submitted to the Division.
- 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:**
The agency will not rely on any study for this rulemaking.
- 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 economic impact of this Section remains essentially unchanged from the last time the rule was amended, effective July 12, 2002. The addition of subsection (G) provides a benefit of medical information confidentiality protection to persons licensed or applying for a license to drive in Arizona. Accordingly, subsection (G) benefits the agency in potential reduction in liability when release of information is denied a non-qualified requestor.
- 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:**
An interested person may communicate with the agency official listed in item #4 concerning the economic 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 oral proceeding is scheduled for this rulemaking. A request for an oral proceeding may be made to the agency official listed in item #4. If no oral proceeding is requested, the public record for this rulemaking will close at 4:30 p.m. on Friday, April 11, 2003.
- 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 4. DEPARTMENT OF TRANSPORTATION
TITLE, REGISTRATION, AND DRIVER LICENSES**

ARTICLE 5. SAFETY

Section

R17-4-502. General Provisions for Visual, Physical, and Psychological Ability to Operate a Motor Vehicle Safely

ARTICLE 5. SAFETY

R17-4-502. General Provisions for Visual, Physical, and Psychological Ability to Operate a Motor Vehicle Safely

- A.** Applicant's or licensee's responsibility. To comply with the Division's screening process for safe operation of a motor vehicle, an applicant or licensee shall:
 1. Provide the Division with all requested information about the applicant's or licensee's visual, physical, or psychological condition;
 2. Successfully complete all required examinations;
 3. Obtain all required evaluations;
 4. Ensure timely submission of evaluation reports to the Division; and
 5. Appear at all required interviews.
- B.** Screening process for safe operation of a motor vehicle. This subsection and subsection (C) through subsection (E) state the screening process for safe operation of a motor vehicle.
 1. An applicant shall complete the application, including the medical screening questions and certification.

Arizona Administrative Register
Notices of Proposed Rulemaking

2. An applicant without a valid driver license, who successfully completes all required examinations, shall obtain an evaluation if:
 - a. The Division informs the applicant that the applicant's responses to the medical screening questions indicate the existence of a disqualifying medical condition; or
 - b. The applicant comes under subsection (C)(1)(a), subsection (C)(1)(c), or subsection (C)(1)(d).
 3. An applicant for license renewal shall successfully complete an examination if the applicant's responses to the medical screening questions indicate that since the applicant's last driver license renewal:
 - a. The applicant has developed a visual, physical, or psychological condition that may constitute a disqualifying medical condition, or
 - b. There has been a change in an existing visual, physical, or psychological condition that may impair the applicant's functional ability.
 4. As soon as an applicant's medical condition allows, the applicant shall notify the Division, in writing or by telephone, that the applicant has or may have a medical condition not previously reported to the Division that affects the applicant's functional ability.
 5. Upon receipt of the notification required under subsection (B)(4), the Division shall require the applicant to:
 - a. Complete the medical screening questions and certification on the application, and
 - b. Continue with the screening process for safe operation of a motor vehicle.
- C.** Evaluation, interview, and additional evaluation. An applicant or licensee shall submit to an evaluation, attend an interview, or submit to an additional evaluation as required by the Division.
1. The Division shall require an evaluation if the Director notifies the applicant or licensee in writing that:
 - a. An applicant or licensee comes under the provisions of R17-4-503 or R17-4-506;
 - b. An applicant or licensee reports a possible disqualifying medical condition or fails to successfully complete an examination;
 - c. An applicant or licensee exhibits unexplained confusion, loss of consciousness, or incoherence that is observed by Division personnel; or
 - d. A person with direct knowledge submits to the Division written information about specific events or conduct indicating the applicant or licensee may have a disqualifying medical condition.
 2. The applicant or licensee shall have the physician, appropriate specialist, or certified substance abuse counselor who performs an evaluation submit, to the Division's Medical Review Program, an evaluation report on a Division-prescribed form.
 3. If the evaluation report on an applicant or licensee is inconclusive regarding the existence of a disqualifying medical condition, the Division shall require the applicant or licensee to appear for an interview to explain information in the evaluation report.
 4. If the existence of a disqualifying medical condition remains inconclusive after an interview with the applicant or licensee, the Division shall require an additional evaluation, performed by an appropriate specialist and reported to the Division's Medical Review Program on the Division-prescribed form.
 5. The applicant or licensee shall pay for any expense incurred by the applicant or licensee to show compliance with the visual, physical, and psychological standards for a driver license.
- D.** Licensing action. The Division shall take a licensing action after requiring an applicant or licensee to complete an examination successfully, obtain an evaluation and submit an evaluation report, or appear at an interview.
1. The Division shall deny a driver license if an applicant:
 - a. Fails to complete successfully an examination; or
 - b. Fails to:
 - i. Obtain an evaluation;
 - ii. Have the physician, appropriate specialist, or certified substance abuse counselor submit an evaluation report to the Division within 30 days after the Division notifies the applicant that an the evaluation is required; or
 - iii. Appear at an interview; or
 - c. Has an evaluation report submitted that indicates a disqualifying medical condition.
 2. The Division shall summarily suspend a licensee's driver license under A.R.S. §§ 28-3306(A)(5) and 41-1064(C) for a reason stated in subsection (D)(1).
 3. The Division shall issue a revocation notice with a notice of summary suspension. The revocation notice shall inform the applicant that:
 - a. Unless the Division receives a licensee's timely hearing request under subsection (F), the revocation becomes effective:
 - i. Fifteen days after the date licensee is personally served with the notice; or
 - ii. Twenty days after the date the notice is mailed to the licensee.
 - b. A person who wishes to obtain a license after suspension or revocation shall reapply for a license as follows:
 - i. After suspension as specified in A.R.S. § 28-3315(H); and

Arizona Administrative Register
Notices of Proposed Rulemaking

- ii. After revocation as specified in A.R.S. § 28-3315(B).
- 4. The Division shall issue a driver license to an applicant or shall not suspend or revoke a licensee's driver license if:
 - a. The applicant or licensee successfully completes all required examinations and the Division does not require an evaluation; or
 - b. The applicant or licensee obtains all required evaluations and the most recent evaluation report submitted on behalf of the applicant or licensee conclusively indicates no disqualifying medical condition.
- E. Driver license restrictions. If an applicant or licensee uses an adaptation, including those listed below to demonstrate functional ability during an examination, the Division shall indicate the adaptation as a restriction on a driver license issued to the applicant or licensee and on the applicant's or licensee's driving record.
 - 1. Automatic transmission,
 - 2. Hand dimmer switch,
 - 3. Left-foot gas pedal,
 - 4. Parking-brake extension,
 - 5. Power steering,
 - 6. Power brakes,
 - 7. Six-way power seat,
 - 8. Right-side directional signal,
 - 9. A device enables an operator to spin the steering wheel,
 - 10. A device that enables full foot control,
 - 11. Dual outside mirrors,
 - 12. Chest restraints,
 - 13. Shoulder restraints,
 - 14. A device that extends pedals,
 - 15. A device that enables full hand control, and
 - 16. Adapted seat.
- F. Hearings. This subsection states the hearing procedure for licensing actions taken by the Division after the screening process for safe operation of a motor vehicle.
 - 1. If the Division takes an adverse licensing action under this Section, an applicant or licensee may request a hearing with the Division's Executive Hearing Office. A hearing request is timely if received by the Division:
 - a. Within 15 days after the date the notice is delivered to the applicant or licensee, or
 - b. Within 20 days after the date the notice is mailed to the applicant or licensee.
 - 2. R17-1-501 through R17-1-511 and R17-1-513 govern a hearing conducted under this subsection.
 - 3. The administrative law judge shall sustain, modify, or void the Division's licensing action.
- G. The Division shall not release an applicant or licensee's confidential information required to be submitted to the Division under this Section except to a person or entity qualified under A.R.S. § 28-450(B).

NOTICE OF PROPOSED RULEMAKING

TITLE 18. ENVIRONMENTAL QUALITY

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

PREAMBLE

- | <u>1. Sections Affected</u> | <u>Rulemaking Action</u> |
|------------------------------------|---------------------------------|
| R18-2-101 | Amend |
| R18-2-1601 | New Section |
| R18-2-1602 | New Section |
| R18-2-1603 | New Section |
| R18-2-1604 | New Section |
| R18-2-1605 | New Section |
| R18-2-1606 | New Section |
- 2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**
Authorizing statutes: A.R.S. §§ 49-104(A)(11) and 49-425
Implementing statutes: A.R.S. §§ 49-414 and 49-414.01

Arizona Administrative Register
Notices of Proposed Rulemaking

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

Notice of Rulemaking Docket Opening: 9 A.A.R. 390, February 7, 2003

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

Name: Deborah "Corky" Martinkovic
Address: ADEQ, Air Quality Planning Section
1110 W. Washington
Phoenix, AZ 85007
Telephone: (602) 771-2372 (Any extension may be reached in-state by dialing 1-800-234-5677, and asking for a specific number.)
Fax: (602) 771-2366
E-mail: martinkovic.deborrah@ev.state.az.us

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

Summary. This rule sets forth the process Arizona Department of Environmental Quality (ADEQ) will use to determine whether Best Available Retrofit Technology (BART) will be required for sources determined to be contributing to visibility impairment in a mandatory Federal Class I area. Federal regulations allow Federal Land Managers (FLMs) to certify sources defined in 40 CFR 51.301 as potential contributors to visibility impairment in any of the Arizona mandatory Federal Class I areas under Section 169A of the Clean Air Act (CAA).

Background. In 1977 Congress added a new section to the Clean Air Act - Section 169A, Visibility Protection for Federal Class I Areas - which established a national goal for, "the prevention of any future, and the remedying of any existing impairment of visibility in mandatory class I Federal areas which impairment results from man-made air pollution." In addition, the section required states to submit state implementation plans (SIPs) requiring best available retrofit technology (BART) for certain existing stationary sources found to cause or contribute to visibility impairment. On November 30, 1979, EPA promulgated a list of mandatory Federal Class I Areas (Class I areas) where visibility is an important value (44 FR 69122). There are 12 Class I areas identified in Arizona: Chiricahua National Monument Wilderness, Chiricahua Wilderness, Galiuro Wilderness, Grand Canyon National Park, Mazatzal Wilderness, Mount Baldy Wilderness, Petrified Forest National Park, Pine Mountain Wilderness, Saguaro Wilderness, Sierra Ancha Wilderness, Superstition Wilderness, and Sycamore Canyon Wilderness (40 CFR 81.403).

On December 2, 1980 (45 FR 80084), EPA defined the role of the FLMs in certifying visibility impairment in the mandatory Federal Class I areas. On November 24, 1987 (52 FR 45132), FLMs identified Petrified Forest National Park, Saguaro Wilderness, and Grand Canyon National Park, as having visibility impairment possibly attributable to stationary sources. Under the 1980 rule, if found to cause or contribute to the impairment, certain existing stationary sources operating in or near the identified Class I areas could be subject to BART (A list of sources eligible for the possible application of BART can be found at 40 CFR 51.301). On October 3, 1991, the Navajo Generating Station (NGS) was found by EPA to be causing or contributing to visibility impairment for the Grand Canyon National Park and eligible for BART (56 FR 50172). BART control analyses were subsequently performed by EPA, and other parties through related court actions. Under the 1980 rule, the federal expectation is that actions for determination of possible source attribution will be performed by the states. Therefore, Arizona needs to be prepared to proceed with an attribution analysis and assessment for the application of controls upon any determination of a BART eligible source being the possible cause or contributor to visibility impairment in a Class I area. This rule addresses that need.

Current Conditions. ADEQ is proposing that this rule apply to any source in existing stationary source categories identified in 40 CFR 51.301 that are operating in or near the mandatory federal Class I areas in Arizona. The source is an existing stationary facility that includes any reconstructed source that was not in operation prior to August 7, 1962, and was in existence on August 7, 1977, and has the potential to emit 250 tons per year of any regulated pollutant. ADEQ estimates that there are potentially 10 such sources within Arizona. "In existence" is interpreted by EPA to be consistent with the term, "commence construction" found in Prevention of Serious Deterioration (PSD) regulations (40 CFR 51.165(a)(1)(xvi) and 40 CFR 52.21 (b)(9)). If construction commenced after August 7, 1977, the source would be subject to the PSD/NSR (new source review) program (the state regulations are found at 18 A.C.C. 2, Article 4). However, EPA also notes "that sources, are not BART eligible if the only change at the plant was the addition of pollution controls. For example, if the only change at a copper smelter during the 1962 through 1977 time period was the addition of acid plants for the reduction of SO₂ emissions, these emission controls would not themselves trigger a BART review."¹

[¹ EPA proposed rule, 66 Federal Register 38119, July 20, 2001.]

Under this proposed rule, ADEQ, when analyzing an attributable source for BART controls, must consider several factors including, for example, costs, remaining useful life of the source, and degree of improvement anticipated to result from the application of the controls (the factors are detailed in R18-2-1605). Sources required by ADEQ to install and operate BART controls have a final opportunity to request exemption from the requirement prior to the application of controls. This opportunity for a federal exemption from BART, is contained in R18-2-1606, and 40 CFR 51.303.

Arizona Administrative Register
Notices of Proposed Rulemaking

Summary. This rule outlines the process through which sources eligible for the application of BART will proceed if certified by the state of Arizona or an FLM as possibly causing or contributing to visibility impairment due to attribution. If found to be attributable for the impairment, a BART analysis will be performed to determine the level of controls necessary to remedy the impairment. This rule enables Arizona to fulfill the requirements of the Clean Air Act and the goal of section 169A of the Act to return the Nation's federal parks and wilderness areas to natural conditions.

Section-by-Section Explanation for the Proposed Rule

R18-2-1601	This Section lists the definitions that apply to this rule.
R18-2-1602	This Section lists the Class I areas addressed by this rule for the applicable existing stationary facilities, as defined in R18-2-1601(2).
R18-2-1603	This Section establishes the procedure for certification of impairment by either a Federal Land Manager with authority over a mandatory Federal Class I area, or the Director, should either believe there exists reasonably attributable visibility impairment in a Federal Class I area as listed in R18-2-1602.
R18-2-1604	This Section establishes the procedure for an attribution analysis after certification of a source or group of sources as outlined in R18-2-1603. Upon completion of the attribution analysis, the procedure for the Director to issue draft and final attribution findings is outlined in R18-2-1604(C).
R18-2-1605	This Section establishes the best available retrofit technology (BART) analysis procedure after a source is identified under R18-2-1604. Upon completion of the BART analysis, the procedure for the Director to issue draft and final BART findings, including alternatives to emission standards, is outlined in R18-2-1605(B) and (C), respectively. The specific conditions where BART would be satisfied due to past or planned actions by the facility are outlined in R18-2-1605(D). EPA determinations regarding new technology that might require a BART analysis for an applicable source, regardless of a source or small group of sources previously being certified and found attributable, are covered in R18-2-1605(E).
R18-2-1606	This Section establishes the procedures for obtaining a federal exemption from a BART 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:

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:

A. Rule Identification

These rules would amend R18-2-101 ("visibility impairment" definition) and add new Sections R18-2-1601 through R18-2-1606. For sources under ADEQ jurisdiction, the rules would take the place of federal regulations that currently govern this area.

B. Entities Directly Impacted

1. Federal Land Managers. Proposed R18-2-1603 would allow Federal Land Managers (FLMs) to certify visibility impairment in mandatory Class I areas. This is already allowed by federal rule. Under R18-2-1601 of the proposed rule, the FLMs able to certify impairment in Arizona are with the United States Forest Service and the National Park Service. There are no FLMs in Arizona from the United States Fish and Wildlife Service, because this agency does not have jurisdiction over any of Arizona's mandatory federal Class I areas.
2. ADEQ. Proposed R18-2-1604 would require ADEQ to identify stationary sources that could cause or contribute to the certified visibility impairment. This function is currently carried out by EPA. Proposed R18-2-1605 would require ADEQ to analyze for BART (best available retrofit technology) controls those sources identified as causing or contributing to visibility impairment. This function is currently carried out by EPA. The impact of this rule on ADEQ would primarily be on the Air Quality Division, Permits and Assessment sections.
3. Stationary sources. Proposed R18-2-1605 would also require stationary sources identified in #2 to install or operate the BART as determined by the Director. Currently, EPA determines and requires BART. To determine impacted stationary sources, ADEQ staff reviewed Title V permits from ADEQ's Air Permit files. Of the 26 industry categories listed in 40 CFR 51.301, only five categories were found to exist under ADEQ's jurisdiction: steam electric plants, cement plants, primary copper smelters, lime plants, and industries using non-utility boil-

Arizona Administrative Register
Notices of Proposed Rulemaking

ers. As a result, potentially 10 sources, representing 16 BART eligible units (boilers and kilns), could be affected by this proposed rule. The combined potential to emit from these sources totaled 94,287 tons per year for NO_x, 141,036 tons per year for SO₂, and 12,146 tons per year for PM. The combined potential to emit for all pollutants for these 10 sources total approximately 250,000 tons per year.

C. Probable Costs and Benefits Associated with the BART/Visibility Impairment Process

1. Direct Costs - FLMs: FLM activities to certify visibility impairment in mandatory Class I areas may involve preparation and analysis of monitoring data, emission inventories, meteorological records, etc. ADEQ estimates that this cost per certification could be as much as \$50,000 if extensive analysis is conducted. These costs exist whether or not these proposed rules become final.
2. Direct Costs - ADEQ: ADEQ costs related to identifying whether a BART eligible stationary source causes or contributes to visibility impairment in Class I areas are based on the activities identified in R18-2-1604(A). ADEQ estimates that these costs could range from \$100,000 – 200,000 per attribution analysis, and be primarily borne by the ADEQ's Air Quality Assessment Section. Costs related to analyzing identified sources for BART are based on the activities identified in proposed R18-2-1605(A) and will be moderate, but less expensive than the attribution analysis. These costs will be primarily born by the Permits Section. These costs would not accrue to the state unless the proposed rule becomes final. Finally, incorporating BART into an existing state air quality permit may require additional resources from the Permits Section. However, these costs, unlike costs for the attribution and BART analysis, would be covered by permit revision fees paid by the source, and would exist whether or not these proposed rules become final.
3. Direct Costs - Stationary sources: If a source or small group of sources is found to cause or contribute to visibility impairment, and the BART determination requires installation of retrofit controls, costs to sources required to install BART would be substantial. The total cost to install a technology similar to BART at the Navajo Generating Station was estimated by SRP to be in the hundreds of millions of dollars (51 Federal Register 50172, October 3, 1991). However, the example of the Navajo Generating Station shows costs to install technology similar to BART can result even where there is no state rule. According to EPA, "Where a State defaults on its obligations under the visibility regulations, EPA may act in place of the State pursuant to a FIP under section 110(c) of the Act, 42 U.S.C. 7410(c)², and promulgate such limitation and measures as are required to achieve reasonable progress."(Ibid. at 50173, footnote not included). Although ADEQ is listing these costs for information purposes, ADEQ is not attributing any costs to install and operate BART to this rule because such requirements can be imposed by the federal government without any state rule.

Benefits. Two kinds of benefits are associated with this proposed rule. The first is reduced emissions. Although, BART could be required to be installed on sources even without this state rule, it is helpful to list the emission benefits. When BART is installed, visibility is improved. Over four million recreation visits were made to Grand Canyon National Park in FY 2001. These visits generate substantial revenue in and for the state of Arizona. Other scenic resources that could also be improved with the installation of BART, and, though less significant than the Grand Canyon, would enhance the tourism resources of Arizona, as well as the quality of life for Arizona citizens. In addition, reduction of visibility-impairing emissions also has health benefits.

The second benefit is replacement of federal regulation with state regulation. The lack of state regulations implementing BART results in Arizona sources being subject to federal regulation implemented by EPA from Washington and San Francisco. These proposed rules would place the identification and analysis of BART sources at ADEQ rather than with EPA. Arizona is currently under a visibility Federal Implementation Plan (FIP), and one or two sources have considered or implemented technology similar to BART under federal rules. Because ADEQ already permits many of these sources, ADEQ is more familiar with the various factors that go into the BART analysis. This would be a benefit to sources being regulated. ADEQ would be implementing the same BART rules that EPA does.

The rule further allows ADEQ to proceed with the implementation of the entire federal rule for visibility improvement. The proposed rule addresses the requirements of 40 C.F.R. §§ 51.302 – 307. These sections must be satisfied before ADEQ can implement the requirements of 40 C.F.R. §§ 51-308 and 309. The plan to implement Section 309 must be submitted to EPA by December 31, 2003.

D. Small Business Analysis

A.R.S. § 41-1055(B)(5) requires agencies to state the probable impact of a rulemaking on small businesses. A.R.S. § 41-1035 requires agencies to reduce the impact of a rule on small businesses by using certain methods when they are legal and feasible in meeting the statutory objectives for the rulemaking. These methods include: (1) exempting them from any or all rule requirements, (2) establishing performance standards which would replace any design or operational standards, or (3) instituting reduced compliance or reporting requirements. An agency may accomplish the third method by establishing less stringent requirements, consolidating or simplifying requirements, or setting less stringent schedules or deadlines.

"Small business" is defined in A.R.S. § 41-1001 as "a concern, including its affiliates, which is independently owned and operated, which is not dominant in its field and which employs fewer than one hundred full-time employees or which had gross annual receipts of less than four million dollars in its last fiscal year." Interpreting this definition

Arizona Administrative Register
Notices of Proposed Rulemaking

means that if a concern has annual gross receipts of more than four million dollars, but fewer than 100 employees, it would not be classified as a small business.

ADEQ expects that none of the potential BART eligible sources would be classified as a small business. A preliminary conclusion is that this proposed rule will not impact other small businesses. However, if a BART eligible source would qualify as a small business, ADEQ is unable to establish different requirements for small businesses. Except for applying for an exemption, as mentioned under "Alternative Methods," ADEQ cannot establish less stringent requirements or exemptions for small businesses, or any BART eligible source.

ADEQ requests comment and additional information relating to any of the conclusions reached in this preliminary EIS.

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: David Lillie
Address: ADEQ, Air Quality Planning Section
1110 W. Washington
Phoenix, AZ 85007
Telephone: (602) 771-4461 (Any extension may be reached in-state by dialing 1-800-234-5677, and asking for a specific number.)
Fax: (602) 771-2366
E-mail: Lillie.David@ev.state.az.us

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: April 7, 2003
Time: 4:30 p.m.
Location: Coconino Library, 300 W. Aspen, Flagstaff, AZ

Date: April 8, 2003
Time: 4:30 p.m.
Location: ADEQ, 1110 W. Washington, Room 145, Phoenix, AZ

Date: April 9, 2003
Time: 4:30 p.m.
Location: State Office Building, 400 W. Congress, Room 158, Tucson, AZ

Nature: Oral Proceedings with opportunity for formal comments on the record
Close of Comment: 5:00 p.m., April 11, 2003

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

Not applicable

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

Not applicable

13. The full text of the rule follows:

TITLE 18. ENVIRONMENTAL QUALITY

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

ARTICLE 1. GENERAL

Section
R18-2-101. Definitions

ARTICLE 16. VISIBILITY; REGIONAL HAZE

Section
R18-2-1601. Definitions
R18-2-1602. Applicability
R18-2-1603. Certification of Impairment
R18-2-1604. Attribution Analysis; Finding
R18-2-1605. BART Control Analysis; Finding
R18-2-1606. Exemption from BART

ARTICLE 1. GENERAL

R18-2-101. Definitions

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

1. No change
2. No change
 - a. No change
 - b. No change
 - c. No change
 - d. No change
 - e. No change
3. No change
4. No change
5. No change
6. No change
7. No change
8. No change
9. No change
10. No change
 - a. No change
 - b. No change
 - c. No change
 - d. No change
 - e. No change
 - f. No change
11. No change
 - a. No change
 - b. No change
 - c. No change
12. No change
13. No change
14. No change
 - a. No change
 - b. No change
15. No change
16. No change
17. No change
18. No change
19. No change
20. No change
21. No change
22. No change
23. No change
24. No change
25. No change

Arizona Administrative Register
Notices of Proposed Rulemaking

- 26. No change
- 27. No change
 - a. No change
 - b. No change
- 28. No change
- 29. No change
- 30. No change
- 31. No change
- 32. No change
- 33. No change
- 34. No change
- 35. No change
- 36. No change
- 37. No change
- 38. No change
- 39. No change
- 40. No change
- 41. No change
- 42. No change
 - a. No change
 - b. No change
 - c. No change
 - d. No change
 - e. No change
 - f. No change
 - g. No change
 - h. No change
 - i. No change
 - j. No change
 - k. No change
 - l. No change
- 43. No change
- 44. No change
 - a. No change
 - b. No change
 - c. No change
 - d. No change
- 45. No change
- 46. No change
- 47. No change
- 48. No change
- 49. No change
- 50. No change
- 51. No change
- 52. No change
- 53. No change
- 54. No change
- 55. No change
- 56. No change
- 57. No change
 - a. No change
 - b. No change
 - c. No change
 - d. No change
 - e. No change
 - f. No change
 - g. No change
 - h. No change
 - i. No change

Arizona Administrative Register
Notices of Proposed Rulemaking

- j. No change
- 58. No change
- 59. No change
- 60. No change
- 61. No change
- 62. No change
- 63. No change
 - a. No change
 - b. No change
 - c. No change
 - i. No change
 - ii. No change
 - iii. No change
 - iv. No change
 - v. No change
 - (1) No change
 - (2) No change
 - vi. No change
 - vii. No change
 - viii. No change
 - (1) No change
 - (2) No change
 - ix. No change
 - (1) No change
 - (2) No change
 - x. No change
 - xi. No change
- 64. No change
 - a. No change
 - b. No change
 - i. No change
 - ii. No change
 - c. No change
 - i. No change
 - ii. No change
 - iii. No change
 - iv. No change
 - v. No change
 - vi. No change
 - vii. No change
 - viii. No change
 - ix. No change
 - x. No change
 - xi. No change
 - xii. No change
 - xiii. No change
 - xiv. No change
 - xv. No change
 - xvi. No change
 - xvii. No change
 - xviii. No change
 - xix. No change
 - xx. No change
 - xxi. No change
 - xxii. No change
 - xxiii. No change
 - xxiv. No change
 - xxv. No change
 - xxvi. No change

Arizona Administrative Register
Notices of Proposed Rulemaking

- xxvii.No change
- 65. No change
- 66. No change
- 67. No change
- 68. No change
- 69. No change
- 70. No change
- 71. No change
- 72. No change
 - a. No change
 - i. No change
 - ii. No change
 - b. No change
 - i. No change
 - ii. No change
 - c. No change
 - d. No change
 - e. No change
 - f. No change
 - i. No change
 - ii. No change
 - iii. No change
 - iv. No change
 - g. No change
- 73. No change
- 74. No change
- 75. No change
- 76. No change
- 77. No change
- 78. No change
- 79. No change
- 80. No change
- 81. No change
- 82. No change
- 83. No change
 - a. No change
 - b. No change
 - c. No change
 - d. No change
- 84. No change
- 85. No change
- 86. No change
- 87. No change
- 88. No change
- 89. No change
- 90. No change
- 91. No change
- 92. No change
- 93. No change
- 94. No change
 - a. No change
 - b. No change
 - c. No change
 - d. No change
- 95. No change
- 96. No change
- 97. No change
 - a. No change
 - b. No change

Arizona Administrative Register
Notices of Proposed Rulemaking

- c. No change
- d. No change
- e. No change
- 98. No change
 - a. No change
 - i. No change
 - ii. No change
 - iii. No change
 - iv. No change
 - v. No change
 - vi. No change
 - vii. No change
 - b. No change
 - c. No change
- 99. No change
 - a. No change
 - b. No change
- 100.No change
- 101.No change
- 102.No change
- 103.No change
- 104.No change
 - a. No change
 - b. No change
 - c. No change
 - d. No change
- 105.No change
- 106.No change
- 107.No change
 - a. No change
 - b. No change
- 108.No change
- 109.No change
- 110.No change
- 111.No change
- 112.No change
- 113.No change
- 114.No change
- 115.No change
- 116.No change
- 117.No change
 - a. No change
 - b. No change
 - c. No change
 - d. No change
 - e. No change
 - f. No change
 - g. No change
 - h. No change
 - i. No change
 - j. No change
 - k. No change
 - l. No change
 - m. No change
 - n. No change
 - o. No change
 - p. No change
 - q. No change
 - r. No change

Arizona Administrative Register
Notices of Proposed Rulemaking

- s. No change
- t. No change
- u. No change
- v. No change
- w. No change
- x. No change
- y. No change
- z. No change
- aa. No change
- bb. No change
- cc. No change
- dd. No change
- ee. No change
- ff. No change
- gg. No change
- hh. No change
- ii. No change
- jj. No change
- kk. No change
- ll. No change
- mm.No change
- nn. No change
- oo. No change
- pp. No change
- qq. No change
- rr. No change
- ss. No change
- tt. No change
- uu. No change
- vv. No change
- ww.No change
- xx. No change
- 118.No change
- 119.No change
- 120.No change
- 121.No change
- 122.No change
- 123.“Visibility impairment” means any humanly perceptible change in visibility (light extinction, visual range, contrast, and coloration) from that which would have existed under natural conditions.
- 124.No change
- 125.No change
 - a. No change
 - b. No change
 - c. No change
 - d. No change
 - e. No change
 - f. No change
 - g. No change
 - h. No change
 - i. No change
 - j. No change
 - k. No change
 - l. No change
 - m. No change
 - n. No change
 - o. No change
 - p. No change
 - q. No change
 - r. No change

Arizona Administrative Register
Notices of Proposed Rulemaking

- s. No change
 - t. No change
 - u. No change
 - v. No change
 - w. No change
 - x. No change
 - y. No change
 - z. No change
 - aa. No change
 - bb. No change
 - cc. No change
 - dd. No change
 - ee. No change
 - ff. No change
 - gg. No change
 - hh. No change
 - ii. No change
 - jj. No change
 - kk. No change
 - ll. No change
 - mm.No change
 - nn. No change
 - oo. No change
 - pp. No change
 - qq. No change
 - rr. No change
 - ss. No change
 - i. No change
 - ii. No change
 - iii. No change
 - iv. No change
- 126.No change

ARTICLE 16. VISIBILITY; REGIONAL HAZE

R18-2-1601. Definitions

In addition to the definitions contained in Articles 1 and 4 of this Chapter and A.R.S. § 49-401.01, the following definitions apply to this Article:

1. “Best available retrofit technology (BART)” means an emission limitation based on the degree of reduction achievable through the application of the best system of continuous emission reduction for each pollutant that is emitted by an existing stationary facility. The emission limitation is established on a case-by-case basis in accordance with R18-2-1605.
2. “Existing stationary facility” means any of the following stationary sources of air pollutants, including any reconstructed source, which was not in operation prior to August 7, 1962, and was in existence on August 7, 1977, and has the potential to emit 250 tons per year or more of any air pollutant. In determining potential to emit, fugitive emissions, to the extent quantifiable, must be counted.
 - a. Fossil-fuel fired steam electric plants of more than 250 million British thermal units per hour heat input.
 - b. Coal cleaning plants (thermal dryers).
 - c. Kraft pulp mills.
 - d. Portland cement plants.
 - e. Primary zinc smelters.
 - f. Iron and steel mill plants.
 - g. Primary aluminum ore reduction plants.
 - h. Primary copper smelters.
 - i. Municipal incinerators capable of charging more than 250 tons of refuse per day.
 - j. Hydrofluoric, sulfuric, and nitric acid plants.
 - k. Petroleum refineries.
 - l. Lime plants.
 - m. Phosphate rock processing plants.

Arizona Administrative Register
Notices of Proposed Rulemaking

- n. Coke oven batteries.
 - o. Sulfur recovery plants.
 - p. Carbon black plants (furnace process).
 - q. Primary lead smelters.
 - r. Fuel conversion plants.
 - s. Sintering plants.
 - t. Secondary metal production facilities.
 - u. Chemical process plants.
 - v. Fossil-fuel boilers of more than 250 million British thermal units per hour heat input.
 - w. Petroleum storage and transfer facilities with a capacity exceeding 300,000 barrels.
 - x. Taconite ore processing facilities.
 - y. Glass fiber processing plants, and
 - z. Charcoal production facilities.
- 3. "Federal Land Manager" means the Secretary of the department, or the Secretary's designee, with authority over the Federal Class I area.
 - 4. "Mandatory Federal Class I Area" means any area identified in 40 CFR §§ 81.400-81.436.
 - 5. "Reasonably attributable" means ascribable by visual observation or other techniques the Director deems appropriate.
 - 6. "Reasonably attributable visibility impairment" means visibility impairment that is caused by the emission of air pollutants from one source, or a small group of sources.

R18-2-1602. Applicability

This Article applies to any existing stationary source located in the state that may reasonably be anticipated to cause or contribute to visibility impairment in any mandatory Federal Class I area identified in 40 CFR §§ 81.401-81.436. Mandatory Federal Class I areas within Arizona are: Chiricahua National Monument Wilderness, Chiricahua Wilderness, Galiuro Wilderness, Grand Canyon National Park, Mazatzal Wilderness, Mount Baldy Wilderness, Petrified Forest National Park, Pine Mountain Wilderness, Saguaro Wilderness, Sierra Ancha Wilderness, Superstition Wilderness, and Sycamore Canyon Wilderness.

R18-2-1603. Certification of Impairment

- A.** A Federal Land Manager with authority over a mandatory Federal Class I area may certify to the Director, at any time, that there exists reasonably attributable visibility impairment in the mandatory Federal Class I area. The Director may also certify that there exists reasonably attributable visibility impairment in any mandatory Federal Class I area as necessary to assure reasonable progress under section 169A(b)(2) of the Clean Air Act.
- B.** Documentation from the affected Federal Land Manager or Director shall include:
 - 1. The mandatory Federal Class I area for which visibility impairment is being certified.
 - 2. Any information documenting the basis for the certification of impairment.

R18-2-1604. Attribution Analysis; Finding

- A.** Upon certification of reasonably attributable visibility impairment in any mandatory Federal Class I area, the Director shall conduct an attribution analysis to identify each existing stationary source that may be reasonably anticipated to cause or contribute to visibility impairment. The Director shall notify the Federal Land Manager, affected source or small group of sources, and local air pollution control officer of the intent to conduct an attribution analysis. The attribution analysis shall be based on the following:
 - 1. Monitoring information obtained through the Arizona Class I Visibility Monitoring Network or special studies approved by ADEQ to ascertain:
 - a. The times visibility impairment occurred, and
 - b. The pollutants contributing to the visibility impairment.
 - 2. Transport analysis or air quality modeling based upon meteorological records to ascertain whether the pollutants were transported to the mandatory Federal Class I area.
 - 3. Other available studies, modeling analysis, and emissions inventories of point, area and mobile source emissions to ascertain:
 - a. The pollutant or pollutants causing the impairment, and
 - b. The source, or small group of sources, emitting the impairing pollutant or pollutants.
 - 4. Other relevant supporting documentation provided by the Federal Land Manager or Director used to make the draft attribution analysis finding.
 - 5. Consideration of any documentation provided by the source or small group of sources.
- B.** In conducting the attribution analysis, the Director shall use monitoring information, meteorological records, and emissions inventories that represent times and locations reasonably concurrent with the visibility impairment.
- C.** The Director shall issue a draft attribution finding that impairment has or has not occurred, and provide public notice of the draft attribution finding. The Director shall publish notice of the draft attribution finding in a newspaper of general circulation in each county containing the mandatory Federal Class I area and the affected source. The Director shall provide

Arizona Administrative Register
Notices of Proposed Rulemaking

at least 30 days from the date of the notice for public comment. Written comments to the Director shall include the name of the person and the person's agent or attorney, if any, and shall clearly set forth reasons why the draft attribution finding should be reviewed. A final attribution finding shall be issued after the public comment period. Existing stationary sources found to cause or contribute to visibility impairment in a mandatory Federal Class I area shall be subject to a BART Control Analysis under R18-2-1605.

R18-2-1605. BART Control Analysis: Finding

A. The Director shall analyze for BART controls each existing stationary source for which a final attribution finding is made under R18-2-1604(C). The Director shall consider the following factors:

1. Available control technology;
2. New source performance standards (NSPS) as adopted in Article 9;
3. Alternative control systems if retrofitting to comply with applicable NSPS standards adopted in Article 9 is found infeasible.
4. Cost of compliance;
5. Energy and non-air quality environmental impacts of compliance;
6. Existing pollution control technology in use at the source or small group of sources;
7. Remaining useful life of the source or small group of sources;
8. Net environmental impact associated with the proposed emission control system;
9. Economic impacts associated with installing and operating the proposed emission control system; and
10. Degree of improvement in visibility anticipated to result from application of the proposed emission control system.

B. The Director shall issue a draft BART finding, and provide public notice of the draft BART finding. The Director shall publish notice of the draft BART finding in a newspaper of general circulation in each county containing the mandatory Federal Class I area and the affected source. The Director shall provide at least 30 days from the date of the notice for public comment. Written comments to the Director shall include the name of the person and the person's agent or attorney, and shall clearly set forth reasons why the draft BART finding should be reviewed. The Director shall issue a final BART finding after the public comment period.

1. The Director shall submit each final BART finding that an existing stationary source is required to meet BART to the Administrator as a revision to the state implementation plan (SIP).
2. The Director shall require that each existing stationary source meet BART as expeditiously as practicable but in no case later than five years after EPA approval of the revision to Arizona's State Implementation Plan.

C. If the Director determines that technological or economic limitations on the applicability of measurement methodology to a particular existing stationary source would make the imposition of an emission standard infeasible, the Director may, as part of the finding under subsection (B), instead prescribe a design, equipment, work practice, or other operational standard, or combination thereof. Such standard, to the degree possible, is to set forth the emission reduction to be achieved by implementation of such design, equipment, work practice or operation, and must provide for compliance by means which achieve equivalent results.

D. The Director shall make a finding that the attributable source has satisfied the BART requirement if the attributable source has:

1. Voluntarily applied best available retrofit technology;
2. Previously applied emission control standards equivalent to BART; or
3. Agreed to shutdown or curtail operations at the attributable source within five years of the finding. An attributable source that does not shutdown or curtail operations shall proceed to meet BART as expeditiously as practicable, but in no case later than five years after EPA's approval of the revision to Arizona's State Implementation Plan.

E. If the Director determines that the imposition of BART or a standard pursuant to subsection (C) is not feasible at the time of the finding, the attributable source shall be required to install and operate BART upon a determination by the Director at a later date that BART or equivalent controls are now feasible.

F. The Director shall provide for a BART control analysis of any existing stationary source that might cause or contribute to impairment of visibility in any mandatory Federal Class I area identified under this Article at such times, as determined by the Administrator, new technology for control of the pollutant becomes reasonably available, if:

1. The pollutant is emitted by that existing stationary source,
2. Controls representing BART for the pollutant have not previously been required under this Article, and
3. The impairment of visibility in any mandatory Federal Class I area is reasonably attributable to the emissions of that pollutant.

R18-2-1606. Exemption from BART

Any existing stationary source required to install, operate, and maintain BART pursuant to this Article, may apply to the Administrator for an exemption from that requirement by obtaining prior written concurrence from the Director according to 40 CFR 51.303.