

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 9. HEALTH SERVICES

CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM ADMINISTRATION

PREAMBLE

1. Sections Affected

R9-22-1405
R9-22-1419
R9-22-1419.01
R9-22-1419.02
R9-22-1419.03
R9-22-1419.04
R9-22-1501
R9-22-1903

Rulemaking Action

Amend
Amend
New Section
New Section
New Section
New Section
Amend
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. § 36-2903.01

Implementing statutes: A.R.S. §§ 36-2903.01, 36-2934, and 36-2929

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

Notice of Rulemaking Docket Opening: 9 A.A.R. 3061, July 11, 2003

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

Name: Barbara Ledder
Address: AHCCCS
Office of Legal Assistance
701 E. Jefferson, Mail Drop 6200
Phoenix, AZ 85034
Telephone: (602) 417-4580
Fax: (602) 253-9115
E-mail: bcledder@ahcccs.state.az.us

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

The Administration is proposing amendments to the rules to clarify and align certain application processes for its programs. The Administration also proposes adding rules to set forth clear, uniform terminology and methodology for determining income eligibility for the acute care program.

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 Administration did not review any study relevant to these rules.

Notices of Proposed Rulemaking

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

Not applicable

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

It is anticipated that the contractors, members, providers, and the Administration will be nominally impacted by the changes to the rule language. These rules clarify and align certain application processes for the Acute Care program, SSI-MAO program and Freedom to Work program. New Sections have been added to clarify the processes for determining income eligibility for these programs. The income eligibility rules were added to establish clear, uniform terminology and methodology for determining income eligibility.

It is anticipated that the private sector, including small businesses and political subdivisions, will not be impacted since the proposed rule language changes are intended to align and clarify the existing rules. The Administration, contractors, providers, and members will benefit from the increased clarity of the rule language and the establishment of rules governing methodology for determining income eligibility.

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: Barbara Ledder
Address: AHCCCS
Office of Legal Assistance
701 E. Jefferson, Mail Drop 6200
Phoenix, AZ 85034
Telephone: (602) 417-4580
Fax: (602) 253-9115
E-mail: bcledder@ahcccs.state.az.us

Proposed rule language is anticipated to be available on the AHCCCS web site (www.ahcccs.state.az.us) on July 25, 2003. Please send written comments to Barbara Ledder by 5:00 p.m., September 8, 2003.

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

Date: September 8, 2003
Time: 1:00 p.m.
Location: AHCCCS
701 E. Jefferson
Phoenix, AZ 85034
Gold Room
Nature: Public Hearing

Date: September 8, 2003
Time: 1:00 p.m.
Location: ALTCS: Arizona Long-Term Care System
110 S. Church, Suite 3250
Tucson, AZ 85701
Nature: Oral Proceeding

Date: September 8, 2003
Time: 1:00 p.m.
Location: ALTCS: Arizona Long-Term Care System
3480 E. Route 66
Flagstaff, AZ 86004
Nature: Oral Proceeding

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 9. HEALTH SERVICES

**CHAPTER 22. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM
ADMINISTRATION**

ARTICLE 14. AHCCCS MEDICAL COVERAGE FOR FAMILIES AND INDIVIDUALS

Section

R9-22-1405. Application Process

R9-22-1419. Income Eligibility Criteria

R9-22-1419.01. Income Eligibility

R9-22-1419.02. Methods For Calculating Monthly Income

R9-22-1419.03. Calculations and Use of Methods Listed In R9-22-1419.02 Based on Frequency of Income

R9-22-1419.04. Exceptions To R9-22-1419.03

ARTICLE 15. AHCCCS MEDICAL COVERAGE FOR PEOPLE WHO ARE AGED, BLIND, OR DISABLED

Section

R9-22-1501. General Information

ARTICLE 19. FREEDOM TO WORK

Section

R9-22-1903. Application for Coverage

ARTICLE 14. AHCCCS MEDICAL COVERAGE FOR FAMILIES AND INDIVIDUALS

R9-22-1405. Application Process

- A.** Right to apply. A person, identified in subsection (B), may apply for AHCCCS medical coverage by submitting a signed Department or Administration approved application to any FAA office or outstation location listed below:
1. A BHS site as provided in Laws 1991, Chapter 213, and § 21;
 2. A CRS site as provided in Laws 1991, Chapter 213, and § 21;
 3. A Baby Arizona approved provider's office, if the applicant is a pregnant woman;
 4. A FQHC or disproportionate share hospital as required by 42 CFR 435.904, or;
 5. ~~A hospital; or~~
 - 6.5. Any other site, including a hospital, approved by the Department or the Administration.
- B.** Who may apply for a person. Any of the following may submit an application:
1. ~~The applicant, a minor applicant's parent, or the applicant's legal or authorized representative may apply for AHCCCS medical coverage. An application shall be witnessed and signed by a third party, if an applicant signs an application with a mark.~~
 2. ~~The applicant may designate an authorized representative either verbally in the presence of a Department employee or in writing.~~
 3. ~~If the applicant is incompetent or incapacitated, someone acting responsibly on behalf of the applicant may apply for AHCCCS medical coverage. Incapacity shall be verified by written documentation signed by a licensed physician, physician assistant, nurse practitioner, or a registered nurse under the direction of a licensed physician.~~
 1. The applicant's legal representative;
 2. The applicant;
 3. The applicant's spouse;
 4. The applicant's parent;
 5. The applicant's authorized representative, designated either verbally in the presence of an employee of the Administration or its designee, or in writing;
 6. An adult who lives with the applicant;
 7. The applicant's adult child; or

Arizona Administrative Register / Secretary of State
Notices of Proposed Rulemaking

8. A concerned party when none of the previously listed people are available to sign, or waiting would cause a delay in the application month and the applicant is an adult who is incapacitated, a child under the age of 18, or a child who is age 18 and a student. Incapacity is verified by written documentation signed by a licensed physician or by one of the following under the direction of a licensed physician:
 - a. A physician assistant,
 - b. A nurse practitioner, or
 - c. A registered nurse,

C. Valid application

1. A valid application contains the legible name and address of each person requesting AHCCCS medical coverage.
2. The Administration or its designee shall accept an application for a person who is incapacitated and whose name and address are not known.
3. Before an application can be approved, the applicant's legal representative, if one exists, shall sign the declarations on the application relating to the applicant's eligibility, under penalty of perjury. A legal representative is a custodial parent of a child under 18, a guardian, or a conservator.
4. When there is no legal representative, or the legal representative is incapacitated, one of the following shall sign the declarations on the application relating to the applicant's eligibility, under penalty of perjury:
 - a. The applicant, when age 18 or older;
 - b. The applicant, when under age 18 and married or not living with a parent;
 - c. The applicant's spouse if not separated;
 - d. An adult, who lives with a child who is under age 18 or age 18 if a student;
 - e. An unmarried partner when living together with a child in common, when the child is an applicant or a member;
or
 - f. A concerned party, if the applicant continues to be incapacitated and no one listed above is available to sign the application on the applicant's behalf. Incapacity is verified by written documentation signed by a licensed physician or by one of the following under the direction of a licensed physician:
 - i. A physician assistant,
 - ii. A nurse practitioner, or
 - iii. A registered nurse,
5. A person in (C)(3) or (C)(4)(a) through (e) may authorize, verbally in the presence of an employee of the Administration or its designee or in writing, someone else to represent the applicant in the application process. The authorized representative may sign the declarations on the application relating to the applicant's eligibility, under penalty of perjury.
6. The application shall be witnessed and signed by a third party if the individual signing the application signs with a mark.

~~C.D.~~ Date of Application-

1. ~~The date of application is the date a signed application is received at a location listed in subsection (A).~~
2. ~~An application shall be accepted if the application contains the legible name and address of each person requesting AHCCCS medical coverage and the signature of the person listed in subsection (B) who submitted the application. The Department shall accept an application and assign a name and address for a person who is incompetent or incapacitated and whose name and address are not known.~~
3. ~~Except for the MED program under R9-22-1427 through R9-22-1432 and a newborn under R9-22-1422, the effective date of eligibility is:~~
 - a. ~~The first day of the month that the applicant files an application if the applicant is eligible that month, or~~
 - b. ~~The first day of the first eligible month following the application month.~~

~~D.E.~~ Complete application. ~~Before an application is approved by the Administration or its designee, it shall be complete. A complete application shall contain information listed in subsection (C), the names of all persons living with the applicant, and the relationship of those persons to the applicant, and all eligibility information requested on the application form required to make an eligibility determination.~~

~~E.F.~~ Assistance with application. ~~The Department Administration or its designee shall allow a person of the applicant's choice to accompany, assist, and represent the applicant in the application process.~~

~~F.G.~~ Applicants who die. ~~If an applicant dies while an application is pending, the Department Administration or its designee shall complete an eligibility determination for all applicants listed on the application, including the deceased applicant.~~

~~G.H.~~ Deceased applicants. ~~The Department Administration or designee shall complete an eligibility determination on an application filed on behalf of a deceased applicant, provided the application is filed in the month of the person's death.~~

I. Effective date of eligibility

1. Eligibility shall be effective on the first day of the month that all eligibility requirements are met, but no earlier than the month of application.

Notices of Proposed Rulemaking

2. Except for the MED program under R9-22-1427 through R9-22-1432 and a newborn under R9-22-1422, the effective date of eligibility is:
 - a. The first day of the month that the applicant files an application if the applicant is eligible that month, or
 - b. The first day of the first eligible month following the application month.

R9-22-1419. Income Eligibility Criteria

- A. Evaluation of income. In determining eligibility, the Department shall evaluate the following types of income received by a person identified in subsection (B):
 1. Earned income, including in-kind income, before any deductions;
 2. For self-employed applicants, the gross business receipts minus business expenses; and
 3. Unearned income.
- B. A person whose income is counted. The Department shall include the income of the following persons when living together under Section 1902(a)(17) of the Act:
 1. Applicant;
 2. Applicant's parent, if the applicant is an unmarried minor child,
 3. Applicant's spouse;
 4. The sponsor and sponsor's spouse of a person meeting the alien requirements under A.R.S. § 36-2903.03;
 5. If applying as a family under R9-22-1420 which includes a dependent child, living with a specified relative, the non-parent caretaker relative and spouse, as allowed under R9-22-1420, and their unmarried minor children;
 6. The Department shall not include the income of a SSI cash recipient.
- C. Income exclusions. The Department shall exclude the following income:
 1. Agent Orange settlement fund payments;
 2. AmeriCorps Network Program;
 3. Burial benefits dispersed solely for burial expenses;
 4. Cash contributions from other agencies or organizations so long as the contributions are not intended to cover the following items:
 - a. Food;
 - b. Shelter, including only rent or mortgage payments;
 - c. Utilities;
 - d. Household supplies, including bedding, towels, laundry, cleaning, and paper supplies;
 - e. Public transportation fares for personal use;
 - f. Basic clothing or diapers; or
 - g. Personal care and hygiene items, such as soap, toothpaste, shaving cream, and deodorant;
 5. Disaster assistance provided by the Federal Disaster Relief Act, disaster assistance organizations, or comparable assistance provided by state or local governments;
 6. Educational grants or scholarships funded by the United States Department of Education or from Veterans Education assistance program or the Bureau of Indian Affairs student assistance program;
 7. Energy assistance which is provided:
 - a. Either in cash or in-kind by a government agency or municipal utility, or
 - b. In-kind by a private nonprofit organization;
 8. Earnings from high school on-the-job training programs;
 9. Earned income of dependent children who are students enrolled and attending school at least half-time as defined by the institution;
 10. Fair Labor Standard Act supplemental payment;
 11. Food stamp benefits;
 12. Foster care maintenance payments intended for children who are not included in the family or MED unit;
 13. Funds set aside in an Individual Development Account under A.A.C. R6-12-404;
 14. Governmental rent and housing subsidies;
 15. Income tax refunds, including any earned income tax credit;
 16. Loans from a private person, a commercial or educational institution;
 17. Nonrecurring cash gifts which do not exceed \$30 per person in any calendar quarter;
 18. Payments made from fund established by the Susan Walker v. Bayer Corporation class action lawsuit or the Ricky Ray Hemophilia Relief Fund Act of 1998;
 19. Radiation exposure compensation payments;
 20. Reimbursement for work-related expenses which do not exceed the actual expense amount;
 21. Reimbursement for Job Opportunities and Basic Skills (JOBS) Program training-related expenses;
 22. Reparation and restitution payments under Section 1902(r) of the Act;
 23. SSI Designated account and interest earned on that account;
 24. TANF or SSI cash assistance payment;

Arizona Administrative Register / Secretary of State
Notices of Proposed Rulemaking

25. Vendor payment to a third-party vendor to cover family expenses, provided the payment is made by an organization or a person who is not a member of the family or MED unit;
 26. Volunteers In Service To America (VISTA) income which does not exceed the state or federal minimum wage;
 27. Vocational rehabilitation program payments made as reimbursement for training-related expenses, subsistence and maintenance allowances, and incentive payments which are not intended as wages;
 28. Women, Infants, and Children (WIC) benefits; or
 29. Any other income specifically excluded by applicable federal law under 20 CFR Part 416 Appendix K.
- D.** Special income provision for child support. The Department shall consider child support to be income of the child for whom the support is intended and count the child support income received after deducting \$50 per child.
- E.** Determining Income For a Month
1. ~~The Department shall include income which is received during the month or which the person reasonably expects to receive in the month based on reasonable expectations and knowledge of the person's current, past, and anticipated future circumstances. Calculating monthly income. The Administration or its designee shall calculate monthly income under A.A.C. R9-22-1419.01 through 1419.13.~~
 2. ~~The Department Administration or its designee shall deduct the applicable disregards and deductions to which a person is entitled for the month.~~
 3. ~~The Department shall convert income received more frequently than monthly to a monthly amount.~~
 4. ~~The Department shall consider a one time lump sum income in the month the income is received.~~
- F.** Earned Income Disregards.
1. General. The Department shall apply the earned income disregards to each employed person's gross earnings.
 2. Disregards. The Department shall apply the following method to calculate the amount of the countable earned income:
 - a. Subtract a \$90 cost of employment (COE) allowance from the gross amount of earned income for each person whose earned income is counted;
 - b. Subtract an amount billed by the child care provider for the care of each dependent child or incapacitated adult member who is the responsibility of the person whose income shall be counted for the purposes to allow the person to work, not to exceed:
 - i. For a wage-earner employed full-time (86 hours or more a month), \$200 for a child under age two, and \$175 for the other dependents; and
 - ii. For a wage earner employed part-time (less than 86 hours a month), \$100 for a child under age two, and \$88 for the other dependents.
 3. Loss of disregards. The Department shall not apply the earned income disregards, if the member fails to report to the Department a change in income within 10 days from the date the change becomes known to the member. The change report to the Department shall be postmarked no later than the 10th day from the date the change becomes known.

R9-22-1419.01. Income Eligibility

A. To be determined eligible under this Article, a person's monthly income must be equal to or below the appropriate FPL listed in R9-22-1420, R9-22-1421, and R9-22-1429.

B. Definitions.

1. "Monthly income" means the gross income received and projected to be received during the month or the monthly equivalent.
2. "Monthly equivalent" means a monthly income amount established by averaging, prorating, or converting a person's income.

R9-22-1419.02. Methods For Calculating Monthly Income

A. Projecting Income

1. Description. Projecting income is a method of determining the amount of income that a person will receive in the future.
2. Calculation. The Administration or designee shall project income by:
 - a. Converting income to a monthly equivalent.
 - b. Using unconverted income, or
 - c. Prorating income to determine the monthly equivalent.
3. Exclusion. When calculating projected monthly income, the Administration or designee shall exclude an unusual variation in income, unless the unusual variation is anticipated to occur during the month.

B. Unconverted income

1. Description. Unconverted income is the actual amount of income received or projected to be received during a month.
2. Calculation. When calculating monthly income, the Administration or designee shall use the unconverted amount under R9-22-1419.03.

Notices of Proposed Rulemaking

C. Converted income

1. Description. Converted income is income received weekly or bi-weekly and changed to a monthly equivalent.
2. Calculation.
 - a. To convert income the Administration or designee shall determine the average weekly or bi-weekly income amount before converting to the monthly equivalent when the person's past income fluctuates and the fluctuation is expected to recur.
 - b. To convert income paid weekly to a monthly equivalent, the Administration or designee shall multiply the weekly average by 4.3 weeks.
 - c. To convert income paid bi-weekly to a monthly equivalent, the Administration or designee shall multiply the bi-weekly average by 2.15 weeks.

D. Averaged income

1. Description. Averaging income proportionally distributes the person's income received on a regular basis.
2. Calculation. To average income, the Administration or designee shall add the amount of the income and divide by the total number of items. When the amounts of income received in the past fluctuate, and the fluctuating amounts are expected to continue, the Administration or designee shall:
 - a. Use the averaged weekly or bi-weekly amounts to convert weekly or bi-weekly income to a monthly equivalent.
 - b. Use the averaged monthly or semi-monthly amounts to project monthly income, and
 - c. Use the averaged hours worked and multiply the average by the new rate of pay. When there is a change in the rate of pay; use this amount when calculating projected income under subsection (A).

E. Prorated income

1. Description. Prorated income evenly distributes a person's income over the period the income is intended to cover to calculate a monthly equivalent.
2. Calculation. To prorate income, The Administration or designee shall divide the total amount of the person's income received during the time period by the number of months that the income is intended to cover.

R9-22-1419.03. Calculations and Use of Methods Listed In R9-22-1419.02 Based on Frequency of Income

- A. If income is received monthly or in a lump sum, the Administration or designee shall use the unconverted method for calculating monthly income.**
- B. If income is received weekly the Administration or designee shall convert the income to a monthly equivalent.**
- C. If income is received bi-weekly the Administration or designee shall convert the income to a monthly equivalent.**
- D. If income is received semi-monthly or daily, the Administration or designee shall use the unconverted method for calculating monthly income.**
- E. If income is received bimonthly, quarterly, semi-annually or annually, the Administration or designee shall prorate the income received or projected to be received.**

R9-22-1419.04. Exceptions To R9-22-1419.03

A. New Income

1. Description. New income is income received from a new source during the first calendar month that the income is received from the source.
2. Calculating monthly income:
 - a. When a full month's income is received, the Administration or its designee shall use the method described in R9-22-1419.03 to calculate the monthly income.
 - b. When less than a full month's income is received, the Administration or its designee shall use the unconverted method to calculate the monthly income.

B. Terminated income

1. Description. Terminated income is income received during the last calendar month that income is received from a terminated source.
2. Calculating monthly income.
 - a. When a full month's income is received, the Administration or its designee shall use the method described in R9-22-1419.03 to calculate the monthly income.
 - b. When less than a full month's income is received, the Administration or its designee shall use the unconverted method to calculate the monthly income.

C. Break in income

1. Description. A break in income is:
 - a. Income received for the first calendar month from a previous source following a break in established frequency of one calendar month or more, or
 - b. Income received for the last calendar month from a source prior to a break in an established frequency of one calendar month or more.

2. Calculating monthly income:
 - a. When a full month's income is received, the Administration or its designee shall use the method described in R9-22-1419.03 to calculate the monthly income.
 - b. When less than a full month's income is received, the Administration or its designee shall use the unconverted method to calculate the monthly income.

D. Contract Income

1. Description. Contract income is income the person earns because of a contract or legal document that specifies a length of time the contract covers, the amount of income to be paid, and the frequency of payment.
2. Calculating monthly income
 - a. The Administration or designee shall calculate the monthly income based on the frequency of payment if income is paid more frequently than monthly.
 - b. The Administration or designee shall prorate over the period of time specified by the contract if income is paid monthly or less frequently.

E. Unusual variation in the amount of income.

1. Description. Unusual variation is an amount of income that is different than the established amount received and is not projected to continue or recur.
2. Calculating monthly income.
 - a. When calculating income for the month in which an unusual variation in income occurs, the Administration or designee shall include the unusual variation in the income calculation.
 - b. When an unusual variation in income occurs during the month, the Administration or its designee shall use the unconverted method for calculating monthly income when income is received weekly or bi-weekly.
 - c. When projecting income for the months following the month in which the unusual variation occurs, the Administration or designee shall exclude the unusual variation in income from the income calculation.

ARTICLE 15. AHCCCS MEDICAL COVERAGE FOR PEOPLE WHO ARE AGED, BLIND, OR DISABLED

R9-22-1501. General Information

- A. General. The Administration shall determine eligibility for AHCCCS medical coverage for the following applicants or members using the eligibility criteria and requirements in this Article.
 1. A person who is aged, blind, or disabled and does not receive SSI cash under 42 CFR 435.210.
 2. A person terminated from the SSI cash program and under R9-22-1505.
- B. Confidentiality. The Administration shall maintain the confidentiality of the person's records and shall not disclose the person's financial, medical, or other confidential information except under Article 5.
- C. Application Process:
 1. A person may apply for AHCCCS medical coverage by submitting a signed application to any Administration office or outstation location under R9-22-1405
 2. ~~The applicant, a minor applicant's parent, the applicant's legal or authorized representative, or if the applicant is incompetent or incapacitated, someone acting responsibly on behalf of the applicant may file the application. An application shall be witnessed and signed by a third party if an applicant signs an application with a mark. The provisions in A.A.C. R9-22-1405(B) and (C) apply to this Section.~~
 3. The application date is the date a signed application is received at any Administration office or outstation location.
 4. The applicant who files an application may withdraw the application, either orally or in writing. If an applicant withdraws an application, the Administration shall send the applicant a denial notice under subsection (F).
 5. Except as provided in 42 CFR 435.911, the Administration shall determine eligibility within 90 days for an applicant applying on the basis of disability and 45 days for all other applicants.
 6. If an applicant dies while an application is pending, the Administration shall complete an eligibility determination for the deceased applicant.
 7. The Administration shall complete an eligibility determination on an application filed on behalf of a deceased applicant, if the application is filed in the month of the person's death.
- D. Redetermination of eligibility for a person terminated from SSI cash program.
 1. Continuation of AHCCCS medical coverage. The Administration shall continue AHCCCS medical coverage for a person terminated from SSI cash program until a redetermination of eligibility under subsection (2) is completed.
 2. Coverage group screening. The Administration shall screen for eligibility under any coverage group under A.R.S. §§ 36-2901(6)(a)(i) and (ii) and 36-2934.
 - a. If an applicant has filed an application for ALTCS coverage, the Administration shall determine eligibility under 9 A.A.C. 28, Article 4.
 - b. If an applicant or member is aged, blind, or disabled, but not in need of long-term care services, the Administration shall determine eligibility under this Article.

Notices of Proposed Rulemaking

- c. For all other persons, the Administration shall refer the applicant case to the Department for an eligibility decision under Article 14.
- 3. Eligibility decision-
 - a. If the applicant is eligible under this Article or 9 A.A.C. 28, Article 4, the Administration shall send a notice as under subsection (F) informing the applicant that AHCCCS medical coverage shall continue.
 - b. If the applicant is ineligible, the Administration shall send a notice as under subsection (F) to discontinue AHCCCS medical coverage.
- E. Eligibility effective date. Eligibility shall be effective on the first day of the month that all eligibility requirements are met, but no earlier than the month of application.
- F. Notice for Approval or Denial. The Administration shall send an applicant a written notice of the decision regarding the application. This notice shall include a statement of the intended action, and:
 - 1. If approved, the notice shall contain the effective date of eligibility.
 - 2. If approved under FESP, the notice shall also contain:
 - a. The emergency services certification end date;
 - b. A statement detailing the reason for the denial of full services;
 - c. The legal authority supporting the decision;
 - d. Where the legal authority supporting the decision can be found;
 - e. An explanation of the right to request a hearing; and
 - f. The date by which a request for hearing shall be received by the Administration.
 - 3. If denied, the notice shall contain:
 - a. The effective date of the denial;
 - b. The reason for the denial, including specific financial calculations and the financial eligibility standard if applicable;
 - c. Legal authority supporting the decision;
 - d. Where the legal authority supporting the decision can be found;
 - e. An explanation of the right to request a hearing; and
 - f. The date by which a request for hearing shall be received by the Administration.
- G. Reporting and verifying changes-
 - 1. Under 42 CFR 435.916, a member shall report to the Administration the following changes for an applicant or a member, an applicant or member's spouse, and an applicant or member's dependent children:
 - a. Change of address;
 - b. Change in the household's members;
 - c. Change in income;
 - d. Change in resources, when applicable;
 - e. Determination of eligibility for other coverage;
 - f. Death;
 - g. Change in marital status;
 - h. Change in school attendance;
 - i. Change in Arizona state residency; and
 - j. Any other change that may affect the member or applicant's eligibility.
 - 2. Under 42 CFR 435.916, a member shall report to the Administration the following changes for an applicant or a member:
 - a. Admission to a penal institution,
 - b. Change in U.S. citizenship or immigrant status,
 - c. Receipt of a Social Security Number, and
 - d. Change in first- or third-party liability which may contribute to the payment of all or a portion of the person's medical costs.
 - 3. A person ~~may~~ shall report a change to the Administration either orally or in writing and shall include the:
 - a. Name of the affected applicant or member;
 - b. Description of the change;
 - c. Date the change occurred;
 - d. Name of the person reporting the change; and
 - e. Social Security or case number of the applicant or member, if known.
 - 4. A person shall provide verification of changes ~~upon request~~ if requested by of the Administration.
 - 5. A person shall report anticipated changes in eligibility to the Administration as soon as the future event becomes known.
 - 6. A person shall report an unanticipated change to the Administration within 10 days following the date the change occurred.

Notices of Proposed Rulemaking

- H. Processing of changes and redeterminations. If a person receives AHCCCS medical coverage under subsection (A), the member's eligibility shall be redetermined at least once every 12 months or more frequently when changes occur under 42 CFR 435.916 which may affect eligibility.
- I. Actions that may result from a redetermination or change. The processing of a redetermination or change shall result in one of the following actions:
 - 1. No change in eligibility,
 - 2. Discontinuance of eligibility if a condition of eligibility is no longer met, or
 - 3. A change in the program under which a person receives AHCCCS medical coverage.
- J. Notice of Discontinuance:
 - 1. Contents of notice. The Administration shall issue a notice whenever it takes an action to discontinue a member's eligibility. The notice shall contain the following information:
 - a. A statement of the action that is being taken;
 - b. The effective date of the action;
 - c. The reason for the discontinuance, including specific financial calculations and the financial eligibility standard if applicable;
 - d. The legal authority that supports the action proposed by the Administration;
 - e. Where the legal authority supporting the decision can be found;
 - f. An explanation of the right to request a hearing; and
 - g. The date by which a hearing request shall be received by the Administration and the right to continue medical coverage pending appeal.
 - 2. Advance notice of changes in eligibility. Advance notice means a notice of proposed action that is issued to the member at least 10 days before the effective date of the proposed action. Except under subsection (3), advance notice shall be issued whenever an adverse action is taken to discontinue eligibility.
 - 3. Exceptions from advance notice. Under 42 CFR 431.213, a notice shall be issued to the member to discontinue eligibility no later than the effective date of action if:
 - a. A member provides to the Administration a clearly written statement, signed by that member, that:
 - i. Services are no longer wanted; or
 - ii. Gives information that requires termination or reduction of services and indicates that the member understands that this shall be the result of supplying that information;
 - b. A member provides information to the Administration that requires termination of eligibility and a member signs a written statement waiving advance notice;
 - c. A member cannot be located and mail sent to the member's last known address has been returned as undeliverable subject to reinstatement of discontinued services under 42 CFR 231(d);
 - d. A member has been admitted to a public institution where a person is ineligible for coverage;
 - e. A member has been approved for Medicaid in another state; or
 - f. The Administration receives information confirming the death of a member.
- K. Request For Hearing. An applicant or member may request a hearing under Article 8 for any of the following adverse actions:
 - 1. Complete or partial denial of eligibility;
 - 2. Termination or reduction of AHCCCS medical coverage; or
 - 3. Delay in the eligibility determination beyond the time-frames listed in R9-22-1501(C).
- L. Assignment of Rights. A person determined eligible assigns rights to all types of medical benefits to which the person is entitled under operation of law under A.R.S. § 36-2903.
- M. ~~Title VI Compliance. Eligibility Determination.~~ The Administration shall determine eligibility under the provisions of this Article. ~~The Administration shall not discriminate against an eligible person or member because of race, color, creed, religion, ancestry, marital status, sexual preference, national origin, age, sex, or physical or mental disability in accordance with Title VI of the U.S. Civil Rights Act of 1964, 42 U.S.C. 2000d, and rules and regulations promulgated according to, or as otherwise provided by law.~~

ARTICLE 19. FREEDOM TO WORK

R9-22-1903. Application for Coverage

- A. A person may apply by submitting a signed application to an Administration office.
- B. The application date is the date the application is received at an Administration office.
- C. ~~The applicant, a minor applicant's parent, the applicant's legal or authorized representative, or if the applicant is incapacitated, someone acting responsibly on behalf of the applicant may file the application. An application shall be witnessed and signed by a third party if an applicant signs an application with a mark. The provisions in A.A.C. R9-22-1405(B) and (C) apply to this Section.~~

- D. The applicant or representative who files the application may withdraw the application for coverage either orally or in writing. An applicant withdrawing an application shall receive a denial notice under R9-22-1904.
- E. Except as provided in 42 CFR 435.911, the Administration shall determine eligibility within 45 days.

NOTICE OF PROPOSED RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 28. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM ARIZONA LONG-TERM CARE SYSTEM

PREAMBLE

- 1. Sections Affected**

	<u>Rulemaking Action</u>
R9-28-401	Amend
R9-28-1303	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. §§ 36-2932 and 36-2950
Implementing statutes: A.R.S. §§ 36-2932 and 36-2950
- 3. A list of all previous notices appearing in the Register addressing the proposed rules:**

Notice of Rulemaking Docket Opening: 9 A.A.R. 3061, July 11, 2003
- 4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Name:	Barbara Ledder
Address:	AHCCCS Office of Legal Assistance 701 E. Jefferson, Mail Drop 6200 Phoenix, AZ 85034
Telephone:	(602) 417-4580
Fax:	(602) 253-9115
E-mail:	bcedder@ahcccs.state.az.us
- 5. An explanation of the rules, including the agency's reasons for initiating the rules:**

The Administration is proposing amendments to the rules to clarify and align certain application processes for its programs.
- 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 Administration did not review any study relevant to these rules.
- 7. A showing of good cause why the rules are necessary to promote a statewide interest if the rules will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable
- 8. The preliminary summary of the economic, small business, and consumer impact:**

It is anticipated that the contractors, members, providers, and AHCCCS will be nominally impacted by the changes to the rule language. These rules clarify and align certain application processes for people applying for the long-term care program.

It is anticipated that the private sector, including small businesses and political subdivisions, will not be impacted since the proposed rule language changes are intended to clarify the existing rules. The Administration, contractors, providers, and members will benefit from the increased clarity of the rule language.

Notices of Proposed Rulemaking

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: Barbara Ledder
Address: AHCCCS
Office of Legal Assistance
701 E. Jefferson, Mail Drop 6200
Phoenix, AZ 85034
Telephone: (602) 417-4580
Fax: (602) 253-9115
E-mail: bcledder@ahcccs.state.az.us

Proposed rule language is anticipated to be available on the AHCCCS web site (www.ahcccs.state.az.us) on July 25, 2003. Please send comments to Barbara Ledder by 5:00 p.m., September 8, 2003.

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

Date: September 8, 2003
Time: 1:00 p.m.
Location: AHCCCS
701 E. Jefferson
Phoenix, AZ 85034
Gold Room
Nature: Public Hearing

Date: September 8, 2003
Time: 1:00 p.m.
Location: ALTCS: Arizona Long-Term Care System
110 S. Church, Suite 3250
Tucson, AZ 85701
Nature: Oral Proceeding

Date: September 8, 2003
Time: 1:00 p.m.
Location: ALTCS: Arizona Long-Term Care System
3480 E. Route 66
Flagstaff, AZ 86004
Nature: Oral Proceeding

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 9. HEALTH SERVICES

CHAPTER 28. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM

ARIZONA LONG-TERM CARE SYSTEM

ARTICLE 4. ELIGIBILITY AND ENROLLMENT

Section
R9-28-401. General

ARTICLE 13. FREEDOM TO WORK

Section

R9-28-1303. Application for Coverage

ARTICLE 4. ELIGIBILITY AND ENROLLMENT

R9-28-401. General

A. Application for ALTCS coverage-

1. The Administration shall provide a person the opportunity to apply for ALTCS without delay.
2. A person may be accompanied, assisted, or represented by another in the application process.
3. To apply for ALTCS, a person shall submit a written application to an ALTCS eligibility office.
 - a. The application shall contain the applicant's name and address.
 - b. ~~The application may be submitted by the applicant's representative.~~ The application shall be submitted by a person listed in A.A.C. R9-22-1405(B).
 - c. ~~The application shall be signed by the person requesting ALTCS coverage or by a representative.~~ Before the application is approved, the application shall be signed by a person listed in A.A.C. R9-22-1405(C).
 - d. A witness shall also sign an application if an applicant signs an application with a mark.
 - e. The date of application is the date the application is received at any ALTCS eligibility office.
4. ~~Except when there is an emergency beyond the Administration's control, the Administration shall not delay the eligibility determination beyond the following time frames when information necessary to make the determination has been provided or obtained:~~
 - a. ~~90 days for an applicant applying on the basis of disability; or~~
 - b. ~~45 days for all other applicants.~~

Except as provided in R9-22-1501(C)(5), the Administration shall determine eligibility within 45 days from the date of applications.

5. The applicant or representative who files the ALTCS application may withdraw the application for ALTCS coverage either orally or in writing to the ALTCS eligibility office where the application was filed. An applicant withdrawing an ALTCS application shall receive a denial notice under subsection (G).
 6. If an applicant dies while an application is pending, the Administration shall complete an eligibility determination for the deceased applicant.
 7. The Administration shall complete an eligibility determination on an application filed on behalf of a deceased applicant, provided the application is filed in the month of the person's death or earlier.
- B. Conditions of ALTCS eligibility.** Except for persons identified in subsection (C), a person shall be approved for ALTCS if all conditions of eligibility for one of the ALTCS coverage groups listed in R9-28-402(B) are met. The conditions of eligibility are:
1. Categorical requirements under R9-28-402;
 2. Citizenship and alien status under R9-28-404;
 3. SSN under R9-28-405;
 4. Living arrangements under R9-28-406;
 5. Resources under R9-28-407;
 6. Income under R9-28-408;
 7. Transfers under R9-28-409;
 8. A legally authorized person shall assign rights to the Administration for medical support and for payment of medical care from any first- and third-parties and shall cooperate by:
 - a. Establishing paternity and obtaining medical support and payments, except for pregnant women under A.A.C. R9-22-1421, unless the person establishes good cause under 42 CFR 433.147 for not cooperating; and
 - b. Identifying and providing information to assist the Administration in pursuing first-and third-parties who may be liable to pay for care and services unless the person establishes good cause for not cooperating;
 9. A person shall take all necessary steps to obtain annuity, pension, retirement, and disability benefits for which a person may be entitled unless the person establishes good cause for not doing so;
 10. State residency under R9-28-403;
 11. Medical eligibility specified in Article 3; and
 12. Providing information and verification specified in Section D.
- C. Persons eligible for Title IV-E or Title XVI.** To be determined eligible for ALTCS, a person eligible for Title IV-E or Title XVI of the Social Security Act shall provide information to determine:
1. Medical eligibility specified in Article 3;
 2. Post-eligibility treatment of income specified in R9-28-408;
 3. Trusts in accordance with federal and state law; and
 4. Transfer of property specified in R9-28-409.

- D.** Verification. If requested by the Administration, a person shall provide information and documentation to verify the following criteria or shall authorize the Administration to verify the following criteria:
1. Categorical requirements under R9-28-402,
 2. SSN under R9-28-405,
 3. Living arrangements under R9-28-406,
 4. Resources under R9-28-407,
 5. Transfers of assets under R9-28-409,
 6. Income under R9-28-408,
 7. Citizenship and alien status under R9-28-404,
 8. First-and third-party liability under subsection (B)(8),
 9. Application for potential benefits under subsection (B)(9),
 10. State residency under R9-28-403,
 11. Medical conditions under Article 3, and
 12. Other individual circumstances necessary to determine a person's eligibility and post-eligibility treatment of income (share-of-cost).
- E.** Documentation of the eligibility decision. The ALTCS eligibility interviewer shall include facts in a person's case record to support the decision on the person's application.
- F.** Eligibility effective date. Eligibility shall be effective the first day of the month that all eligibility requirements are met but no earlier than the month of application.
- G.** Notice. The Administration shall send a person a written notice of the decision regarding the person's application. The notice shall include a statement of the action and an explanation of the person's hearing rights specified in Article 8 and:
1. If the applicant's eligibility is approved, the notice shall contain:
 - a. The effective date of eligibility; and
 - b. Post-eligibility treatment of income (share-of-cost) information which is the amount the person shall pay toward the cost of care.
 2. If the applicant's eligibility is denied, the notice shall contain:
 - a. The effective date of the denial;
 - b. A statement detailing the reason for the person's denial, including specific financial calculations and the financial eligibility standard if applicable; and
 - c. The legal authority supporting the decision.
- H.** Confidentiality. The Administration shall maintain the confidentiality of a person's record and shall not disclose the person's financial, medical, or other privacy interests except under A.A.C. R9-22-512.
- I.** ~~Title VI Compliance. Eligibility determination.~~ The Administration shall determine eligibility under the provisions of this Article. ~~The Administration shall not discriminate against an eligible person or member because of race, color, creed, religion, ancestry, marital status, sexual preference, national origin, age, sex, or physical or mental disability in accordance with Title VI of the U.S. Civil Rights Act of 1964, 42 U.S.C. 2000d, and rules and regulations promulgated according to, or as otherwise provided by law.~~

ARTICLE 13. FREEDOM TO WORK

R9-28-1303. Application for Coverage

- A.** A person may apply by submitting a signed application to an Administration office.
- B.** The application date is the date the application is received at an Administration office.
- C.** ~~The applicant, a minor applicant's parent, the applicant's legal or authorized representative, or if the applicant is incapacitated, someone acting responsibly on behalf of the applicant may file the application. An application shall be witnessed and signed by a third party if an applicant signs an application with a mark. The provisions of A.A.C. R9-22-1405(B) and (C) apply to this Section.~~
- D.** The applicant or representative who files the application may withdraw the application for coverage either orally or in writing. An applicant withdrawing an application shall receive a denial notice under R9-28-1304.
- E.** Except as provided in 42 CFR 435.911, the Administration shall determine eligibility within 45 days.

NOTICE OF PROPOSED RULEMAKING

TITLE 9. HEALTH SERVICES

**CHAPTER 29. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM
QUALIFIED MEDICARE BENEFICIARY (QMB)**

PREAMBLE

1. Sections Affected

Rulemaking Action

R9-29-101	Amend
R9-29-102	New Section
R9-29-201	Amend
R9-29-202	Repeal
R9-29-202	New Section
R9-29-203	Repeal
R9-29-203	New Section
R9-29-204	New Section
R9-29-205	New Section
R9-29-206	New Section
R9-29-207	New Section
R9-29-208	New Section
R9-29-209	New Section
R9-29-210	New Section
R9-29-211	New Section
R9-29-212	New Section
R9-29-213	New Section
R9-29-214	New Section
R9-29-215	New Section
R9-29-216	New Section
R9-29-217	New Section
R9-29-218	New Section
R9-29-219	New Section
R9-29-220	New Section
R9-29-221	New Section
R9-29-222	New Section
R9-29-223	New Section
R9-29-224	New Section
R9-29-301	Amend
R9-29-302	Amend
R9-29-303	New Section
R9-29-401	Amend
R9-29-501	Amend
R9-29-502	Repeal
R9-29-503	Amend
R9-29-601	Amend
R9-29-602	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. § 2903.01

Implementing statute: A.R.S. § 36-2972

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

Notice of Rulemaking Docket Opening: 9 A.A.R. 1471, May 16, 2003

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

Name: Barbara Ledder

Address: AHCCCS
Office of Legal Assistance
701 E. Jefferson, Mail Drop 6200
Phoenix, AZ 85034

Notices of Proposed Rulemaking

Telephone: (602) 417-4580
Fax: (602) 253-9115
E-mail: bcledder@ahcccs.state.az.us

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

The Administration submitted its five-year rule review to the Governor's Regulatory Review Council in January 2003. The rule amendments stated in the five-year review are incorporated in this proposed rule package. Additionally, the Administration proposes further amendments to this Chapter, making it more clear, concise, and understandable.

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:

No study was reviewed and the agency does not anticipate reviewing any study.

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

Not applicable

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

At this time, the agency anticipates that there will be a nominal cost to the Administration to implement the proposed amendments to this Chapter. There will be no cost incurred by any other entity. The proposed changes to the rules are designed only to make the rules more clear, concise, and understandable.

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: Barbara Ledder
Address: AHCCCS
Office of Legal Assistance
701 E. Jefferson, Mail Drop 6200
Phoenix, AZ 85034
Telephone: (602) 417-4580
Fax: (602) 253-9115
E-mail: bcledder@ahcccs.state.az.us

Proposed rule language will be available on the AHCCCS web site (www.ahcccs.state.az.us) on July 25, 2003. Please send written comments to Barbara Ledder by 5:00 p.m., September 8, 2003.

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

Date: September 8, 2003
Time: 1:00 p.m.
Location: AHCCCS
701 E. Jefferson, Gold Room
Phoenix, AZ 85034
Nature: Public Hearing

Date: September 8, 2003
Time: 1:00 p.m.
Location: ALTCS: Arizona Long-Term Care System
110 S. Church, Suite 3250
Tucson, AZ 85701
Nature: Oral Proceeding

Notices of Proposed Rulemaking

Date: September 8, 2003
Time: 1:00 p.m.
Location: ALTCS: Arizona Long-Term Care System
3480 E. Route 66
Flagstaff, AZ 86004
Nature: Oral Proceeding

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

Not applicable

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

Not applicable

13. The full text of the rules follows:

TITLE 9. HEALTH SERVICES

**CHAPTER 29. ARIZONA HEALTH CARE COST CONTAINMENT SYSTEM
~~QUALIFIED MEDICARE BENEFICIARY (QMB)~~ MEDICARE COST SHARING**

ARTICLE 1. DEFINITIONS

Section
R9-29-101. Location of Definitions
R9-29-102. Dually Eligible

~~ARTICLE 2. ELIGIBILITY AND ENROLLMENT~~

Section
R9-29-201. ~~General Provisions of QMB Eligibility~~
R9-29-202. ~~QMB Enrollment Opportunity to Apply~~
R9-29-203. ~~QMB Discontinuance~~ How to File an Application
R9-29-204. ~~Repeated~~ Date of Application
R9-29-205. Valid Application
R9-29-206. Assistance with Application
R9-29-207. Assignment of Rights
R9-29-208. Medical Support Obligation
R9-29-209. Social Security Number (SSN)
R9-29-210. Citizenship
R9-29-211. Residency
R9-29-212. Income Calculation
R9-29-213. Income Standards
R9-29-214. Application for Other Benefits
R9-29-215. Institutionalized Person
R9-29-216. Resources
R9-29-217. Verification
R9-29-218. Medicare Requirements
R9-29-219. Eligibility Determination
R9-29-220. Notice of Eligibility Determination
R9-29-221. Effective Date of Eligibility
R9-29-222. Discontinuance
R9-29-223. Redetermination
R9-29-224. Reporting Changes

ARTICLE 3. ~~COVERED~~ BENEFITS AND SERVICES

Section
R9-29-301. ~~Qualified Medicare Beneficiary~~ QMB Only
R9-29-302. ~~Qualified Medicare Beneficiary with Dual Eligibility~~ Dually Eligible
R9-29-303. SLMB and OI-1

ARTICLE 4. CONTRACTOR, PROVIDER, ~~NONPROVIDER~~, AND NONCONTRACTING PROVIDER REQUIREMENTS

Section

R9-29-401. Contractor, Provider, ~~Nonprovider~~, and Noncontracting Provider Requirements

ARTICLE 5. GRIEVANCE AND APPEAL PROCESS

Section

R9-29-501. General Provisions for a Grievance and a Request for Hearing

R9-29-502. ~~Grievance~~ Repealed

R9-29-503. Eligibility Hearing for an Applicant or a Member ~~under 9 A.A.C. 29, Article 2~~

R9-29-504. Repealed

ARTICLE 6. ~~1ST AND 3RD- FIRST- AND THIRD-PARTY LIABILITY AND RECOVERIES~~

Section

R9-29-601. ~~1st and 3rd- First- and Third-Party Liability and Coordination of Benefits~~ Recoveries

R9-29-602. ~~1st and 3rd-Party Liability Monitoring and Compliance~~ Repealed

ARTICLE 1. DEFINITIONS

R9-29-101. Location of Definitions

A. Location of definitions. Definitions applicable to Chapter 29 are found in the following:

Definition	Section or Citation
"AHCCCS"	R9-22-101
"ALTCS"	A.R.S. § 36-2932
"CFR"	R9-29-101
"Contractor"	A.R.S. § 36-2971
"Director"	R9-22-101
"Dual eligible"	A.R.S. § 36-2971
"Enrollment"	R9-22-117
"First-party liability"	R9-22-110
"Grievance"	R9-22-108
"Hearing"	R9-22-108
"Program contractor"	A.R.S. § 36-2971
"QMB-only"	R9-29-101
"Third-party"	R9-22-110
"Third-party liability"	R9-22-110

B. General definitions. The following words and phrases, in addition to definitions contained in A.R.S. § 36-2971, have the following meanings unless the context of the Chapter explicitly requires another meaning:

"AHCCCS" is defined in 9 A.A.C. 22, Article 1.

"ALTCS" means the Arizona Long-Term Care System as authorized by A.R.S. § 36-2931 et seq.

"CFR" means the Code of Federal Regulations.

"Director" is defined in 9 A.A.C. 22, Article 1.

"Dual eligible" is defined in A.R.S. § 36-2971.

"Enrollment" is defined in 9 A.A.C. 22, Article 1.

"Grievance" is defined in 9 A.A.C. 22, Article 1.

"Hearing" is defined in 9 A.A.C. 22, Article 1.

"Program contractor" is defined in A.R.S. § 36-2971.

"QMB-only" means Qualified Medicare Beneficiary only and is defined in A.R.S. § 36-2971.

"Third-party" is defined in 9 A.A.C. 22, Article 1.

"Third-party liability" is defined in 9 A.A.C. 22, Article 1.

Notices of Proposed Rulemaking

- A. Location of Definitions. Definitions for this Chapter are contained under A.R.S. § 36-2971. Definitions include “Qualified Medicare Beneficiary only” (QMB) “Specified Low Income Beneficiary” (SLMB), and “Qualified Individual-1.” For the purpose of Article 2, QMB includes members defined in A.R.S. § 36-2971(5) and (11).
- B. “Medicare Cost Sharing” (MCS). The MCS program is administered by the Administration and provides help to Medicare beneficiaries with costs related to Medicare services. MCS is also referred to as the “Medicare Savings program.”

R9-29-102. Dually Eligible

Under A.R.S. § 36-2971 a person determined eligible under Article 2 for QMB, may also be eligible for Acute Care services provided for in 9 A.A.C. 22 or ALTCS services provided for in 9 A.A.C. 28.

ARTICLE 2. ELIGIBILITY AND ENROLLMENT

R9-29-201. General Provisions of QMB Eligibility

- ~~A. The Administration shall process applications and determine eligibility in accordance with 42 U.S.C. § 1396d(p) August 5, 1997, and 42 CFR 435, Subpart J, incorporated by reference and on file with the Administration and the Office of the Secretary of State. This incorporation by reference contains no future editions or amendments.~~
- ~~B. Eligibility for QMB benefits becomes effective the 1st day of the month following the month in which an eligibility decision is made.~~
- ~~C. In accordance with A.R.S. § 36-2903.03, an individual shall be a U.S. citizen or have qualified alien status to be eligible for QMB benefits.~~
- ~~D. All QMB members shall be residents of Arizona in accordance with 42 CFR 435.403, incorporated by reference and on file with the Administration and the Office of the Secretary of State. This incorporation by reference contains no future editions or amendments.~~
- A. Eligibility Determination. The Administration shall determine eligibility for QMB, SLMB, and QI-1 under this Article.
- B. Confidentiality. The Administration shall maintain the confidentiality of a person’s financial information except as provided under Article 5.

R9-29-202. QMB Enrollment Opportunity to Apply

~~Dual eligibles shall be enrolled or remain enrolled with the health plan, program contractor, or fee-for-service network in accordance with the provisions specified in 9 A.A.C. 22 and 9 A.A.C. 28.
The Administration shall provide the opportunity to apply without delay.~~

R9-29-203. QMB Discontinuance How to File an Application

- ~~A. The Administration shall provide notice of discontinuance in accordance with 42 CFR 431.210, 431.211, 431.213, and 435.919 to members who become ineligible for QMB benefits, incorporated by reference and on file with the Administration and the Office of the Secretary of State. This incorporation by reference contains no future editions or amendments.~~
- ~~B. The Administration shall discontinue immediately and without notice members who lose QMB eligibility due to death; discontinuance shall be effective the day after the date of death.~~
- ~~C. A member shall lose QMB eligibility due to incarceration and shall be discontinued the date the Administration is notified.~~
- A. Written application. A person shall apply for the MCS program by submitting a written application form prescribed by the Administration to any Administration office of outstation location.
- B. Who shall submit. The application shall be submitted by a person listed in R9-22-1405(B).

R9-29-204. Repealed Date of Application

~~The date of application is the date a signed application is received at any Administration office or outstation location.~~

R9-29-205. Valid Application

~~The application shall be valid under R9-22-1405(C).~~

R9-29-206. Assistance with Application

- A. Applicant’s Representative. The Administration shall allow a person of the applicant’s choice to accompany, assist, and represent the applicant in the application process.
- B. Assistance by the Administration. If requested, the Administration shall help a person complete an application.

R9-29-207. Assignment of Rights

~~A person determined eligible for QMB assigns rights to medical benefits to which the person is entitled under operation of law under A.R.S. §§ 36-2903 and 36-2972.~~

R9-29-208. Medical Support Obligation

~~To be eligible for QMB, a person shall provide information necessary to establish paternity and enforce medical support obligations, when requested by the Administration.~~

Arizona Administrative Register / Secretary of State
Notices of Proposed Rulemaking

R9-29-209. Social Security Number (SSN)

To be eligible, a person shall furnish a SSN or apply for a SSN.

R9-29-210. Citizenship

To be eligible, a person shall be a United States citizen or a qualified alien under A.R.S. § 36-2903.03.

R9-29-211. Residency

To be eligible, a person shall be a current resident of the state of Arizona.

R9-29-212. Income Calculation

Income shall be calculated under A.A.C. R9-22-1503.

R9-29-213. Income Standards

To be eligible, a person's income shall meet the following Federal Poverty Levels (FPL), adjusted annually:

- A. QMB.** Income is equal to or less than one hundred percent of the FPL.
- B. SLMB.** Income is greater than one hundred percent but is equal to or less than one hundred twenty percent of the FPL.
- C. QI-1.** Income is at least one hundred twenty percent but is equal to or less than one hundred thirty-five percent of the FPL.

R9-29-214. Application for Other Benefits

To be eligible, a person shall apply for other benefits, if requested by the Administration.

R9-29-215. Institutionalized Person

The provisions in A.A.C. R9-22-1402 apply to this Article for an institutionalized person.

R9-29-216. Resources

All resources are disregarded under this Article.

R9-29-217. Verification

To be eligible, a person shall provide verification, or authorize the release of verification, for all information necessary to complete the determination of eligibility.

R9-29-218. Medicare Requirements

- A. Medicare Part A.** To be eligible, a person shall either be receiving Medicare Part A benefits or shall be entitled to Medicare Part A benefits under Title XVIII of the Social Security Act.
- B. Entitled.** For the purpose of this Section, entitled means a person who:
 - 1. Has attained the age of 65.
 - 2. Is enrolled in Medicare Part B.
 - 3. Is a resident of the United States and
 - 4. Is either a citizen of the United States or a lawful permanent resident who has continuously resided in the United States for the five years immediately preceding the month in which he applies for enrollment, but
 - 5. Does not have sufficient quarters of employment to qualify for social security or railroad retirement.

R9-29-219. Eligibility Determination

The Administration shall make an eligibility determination within 45 days of the date of application.

R9-29-220. Notice of Eligibility Determination

The Administration shall send an applicant written notice of the eligibility decision. The notice shall include a statement of the action and an explanation of the person's hearing rights specified in Article 5.

- A. Approval.** If the applicant's eligibility is approved, the notice shall contain the effective date of eligibility.
- B. Denial.** If the applicant's eligibility is denied, the notice shall contain:
 - 1. The effective date of the denial;
 - 2. A statement detailing the reason for the denial, including specific financial calculations and the financial eligibility standard if applicable; and
 - 3. The legal authority supporting the decision.

R9-29-221. Effective Date of Eligibility

- A. QMB.** The effective date of eligibility is the first day of the month following the month in which the eligibility decision is made.
- B. SLMB and QI-1.** The effective date of eligibility is the first day of the first month the person is eligible but no earlier than the first day of the first month of application.

R9-29-222. Discontinuance

- A.** Discontinuance. The Administration shall discontinue eligibility if any of the conditions of eligibility under this Article are not met.
- B.** Notice. The Administration shall follow the discontinuance notice requirements under R9-22-1413.

R9-29-223. Redetermination

- A.** QMB and SLMB. A person's eligibility for QMB or SLMB shall be redetermined at least one time every 12 months.
- B.** QI-1. A person receiving QI-1 benefits shall reapply each calendar year.

R9-29-224. Reporting Changes

A person shall report to an ALTCS or SSI/MAO office the following changes for a person, a person's spouse, or a person's dependent children:

1. A change of address;
2. An admission to or discharge from a public institution;
3. A change in household composition;
4. A change in income;
5. A determination of eligibility for other benefits;
6. A death;
7. A change in marital status;
8. A change in Arizona state residency;
9. A change in citizenship or alien status;
10. Receipt of an SSN;
11. A change in Medicare receipt or eligibility; and
12. For QMB recipients, a change in first- or third-party liability that may be responsible for payment of all or a portion of the person's medical costs.

ARTICLE 3. ~~COVERED~~ BENEFITS AND SERVICES

R9-29-301. ~~Qualified Medicare Beneficiary QMB Only~~

- A.** ~~A person determined eligible as a QMB only may receive the following benefits and services:~~
- ~~1. Payment of Medicare Part A premiums, coinsurance, and deductibles;~~
 - ~~2. Payment of Medicare Part B premiums, coinsurance, and deductibles; and~~
 - ~~3. Medicare covered services defined in 42 CFR 409 and 410.~~

QMB benefits. A person determined eligible as a QMB only member shall receive payment of:

1. Medicare Part A premium,
2. The Medicare Part B premium, and
3. Medicare coinsurance, Medicare deductible, and/or Medicare copayments for Medicare covered services under Title XVIII of the Act.

- B.** ~~A person determined eligible as a QMB only member who receives covered services from a provider that does not accept Medicare assignment is entitled to coverage of the coinsurance and deductible up to and not exceeding the Medicare approved amount. The AHCCCS Administration shall make payment of the coinsurance and deductible for a QMB only member only to the provider. Under no circumstances shall the AHCCCS Administration make a coinsurance or deductible payment to a QMB only member. The QMB only member is responsible for any balance due to the provider after reimbursement of the applicable coinsurance and deductible by the AHCCCS Administration. The AHCCCS Administration shall have no liability for any balance.~~

Payment of QMB only benefits.

1. The Administration shall pay Medicare Part A and Part B premium.
2. The Administration shall pay coinsurance, deductible and/or copayment.
 - a. The Administration shall not pay more than the Medicare approved amounts.
 - b. The Administration shall pay the coinsurance, deductible, and/or copayment to the provider.
 - c. The Administration shall not pay coinsurance, deductible, and/or copayment to a member.

R9-29-302. ~~Qualified Medicare Beneficiary with Dual Eligibility Dually Eligible~~

- A.** ~~A person determined dual dually eligible may shall receive the following benefits and services:~~

- ~~1. The benefits and services described in R9-29-301; and~~
- ~~2. Medical services and provisions in 9 A.A.C. 22, Article 2, subject to the specified limitations and exclusions or services and provisions in 9 A.A.C. 28, Article 2, subject to the specified limitations and exclusions.~~

A person determined a dually eligible member shall receive medical services and provisions in 9 A.A.C. 22, Article 2, or the services and provisions in 9 A.A.C. 28, Article 2, in addition to Medicare covered services under R9-29-301(A).

Notices of Proposed Rulemaking

- B. The AHCCCS Administration may deny shall deny payment for covered benefits and services if:
1. The services are not obtained within the member's health plan, or program contractor or fee-for-service network; or
 2. The services are not provided in conformance with the provisions in 9 A.A.C. 22 or 9 A.A.C. 28.
- The Administration shall pay the Medicare Part A and Part B premium. The contractor shall pay the coinsurance, deductibles, and copayments in accordance with the contract with the Administration.
- C. A person determined dual dually eligible member who receives covered services in 9 A.A.C. 22, Article 2 or 9 A.A.C. 28, Article 2 from a provider within the health plan, program contractor's, network or fee-for-service network shall not be is not liable for any Medicare coinsurance, or deductible, or copayment associated with those services and is not liable for any balance.

R9-29-303. SLMB and OI-1

The Administration shall pay Medicare Part B premiums.

ARTICLE 4. CONTRACTOR, PROVIDER, NONPROVIDER, AND NONCONTRACTING PROVIDER REQUIREMENTS

R9-29-401. Contractor, Provider, Nonprovider, and Noncontracting Provider Requirements

- A. Contractors and other providers shall be responsible for providing the covered services specified in R9-29-302 to dual eligible and QMB-only members as specified in 9 A.A.C. 22.
A contractor is responsible for benefits and services specified in R9-29-302(B) and 9 A.A.C. 22, or 9 A.A.C. 28 for dually eligible members.
- B. Program contractors and other providers shall be responsible for providing the covered services specified in R9-29-302 to dual eligible and QMB-only members as specified in 9 A.A.C. 28.
The contractor is responsible for the coinsurance, deductibles, and/or copayments for services not covered in 9 A.A.C. 22, Article 2 or 9 A.A.C. 28, Article 2, but which are covered by Medicare.
- C. Nonproviders and noncontracting Providers and noncontracting providers shall submit all claims for copayments, deductibles, and coinsurance for services rendered to a dual eligible and QMB-only member including claims for copayments, under A.R.S. § 36-2904(H).

ARTICLE 5. GRIEVANCE AND APPEAL PROCESS

R9-29-501. General Provisions for a Grievance and a Request for Hearing

A grievance and a request for hearing under this Chapter shall comply with R9-22-801 and R9-22-802.

R9-29-502. Grievance Repealed

A grievance and request for hearing under this Chapter shall comply with R9-22-802.

R9-29-503. Eligibility Hearing for an Applicant or a Member under 9 A.A.C. 29, Article 2

An eligibility hearing for a member or an applicant under this Chapter shall comply with R9-22-803.

R9-29-504. Repealed

ARTICLE 6. ~~1ST AND 3RD~~ FIRST- AND THIRD-PARTY LIABILITY AND RECOVERIES

R9-29-601. ~~1st and 3rd~~ First- and Third-Party Liability and ~~Coordination of Benefits~~ Recoveries

- A. The provisions specified in 9 A.A.C. ~~R9-22-1001~~ 22, Article 10 apply to this Section.
- B. The Administration shall not be liable for payment of coinsurance and deductibles when Medicare denies payment.

R9-29-602. ~~1st and 3rd Party Liability Monitoring and Compliance~~ Repealed

The provisions in A.A.C. ~~R9-22-1002~~ apply to this Section.

NOTICE OF PROPOSED RULEMAKING

TITLE 9. HEALTH SERVICES

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

PREAMBLE

- 1. Sections Affected**

R9-31-302	Amend
R9-31-303	Amend
R9-31-304	Amend
R9-31-1702	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. §§ 36-2903.01, 36-2982, and 36-2986
Implementing statutes: A.R.S. §§ 36-2981.01, 36-2982, and 36-2983
- 3. A list of all previous notices appearing in the Register addressing the proposed rules:**

Notice of Rulemaking Docket Opening: 9 A.A.R. 3061, July 11, 2003
- 4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Name:	Barbara Ledder
Address:	AHCCCS Office of Legal Assistance 701 E. Jefferson, Mail Drop 6200 Phoenix, AZ 85034
Telephone:	(602) 417-4580
Fax:	(602) 253-9115
E-mail:	bcedder@ahcccs.state.az.us
- 5. An explanation of the rules, including the agency's reasons for initiating the rules:**

The Administration is proposing amendments to the rules to clarify and align certain application processes for its programs. The Administration also proposes amending the rules to set forth clear, uniform terminology and methodology for determining income eligibility for the acute care and KidsCare programs.
- 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 Administration did not review any study relevant to these rules.
- 7. A showing of good cause why the rules are necessary to promote a statewide interest if the rules will diminish a previous grant of authority of a political subdivision of this state:**

Not applicable
- 8. The preliminary summary of the economic, small business, and consumer impact:**

It is anticipated that the contractors, members, providers, and AHCCCS will be nominally impacted by the changes to the rule language. These rules clarify and align the application processes for the acute care program and the KidsCare program. The rules have been amended to clarify the processes for determining income eligibility for this program. The income eligibility rules were amended to establish clear, uniform terminology and methodology for determining income eligibility.

It is anticipated that the private sector, including small businesses and political subdivisions, will not be impacted since the proposed rule language changes are intended to align and clarify the existing rules. The Administration, contractors, providers, and members will benefit from the increased clarity of the rule language and the establishment of rules governing methodology for determining income eligibility.

Arizona Administrative Register / Secretary of State
Notices of Proposed Rulemaking

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: Barbara Ledder
Address: AHCCCS
Office of Legal Assistance
701 E. Jefferson, Mail Drop 6200
Phoenix, AZ 85034
Telephone: (602) 417-4580
Fax: (602) 253-9115
E-mail: bcledder@ahcccs.state.az.us

Proposed rule language is anticipated to be available on the AHCCCS web site (www.ahcccs.state.az.us) on July 25, 2003. Please send comments to Barbara Ledder by 5:00 p.m., September 8, 2003.

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

Date: September 8, 2003
Time: 1:00 p.m.
Location: AHCCCS
701 E. Jefferson
Phoenix, AZ 85034
Gold Room
Nature: Public Hearing

Date: September 8, 2003
Time: 1:00 p.m.
Location: ALTCS: Arizona Long-Term Care System
110 S. Church, Suite 3250
Tucson, AZ 85701
Nature: Oral Proceeding

Date: September 8, 2003
Time: 1:00 p.m.
Location: ALTCS: Arizona Long-Term Care System
3480 E. Route 66
Flagstaff, AZ 86004
Nature: Oral Proceeding

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:

20 CFR 416, Appendix to subpart K as of June 6, 1997, located at R9-31-304(D)(1)

13. The full text of the rules follows:

TITLE 9. HEALTH SERVICES

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

ARTICLE 3. ELIGIBILITY AND ENROLLMENT

Section

- R9-31-302. Applications
- R9-31-303. Eligibility Criteria
- R9-31-304. Income Eligibility

ARTICLE 17. ELIGIBILITY AND ENROLLMENT FOR A PARENT

Section

- R9-31-1702. Application

ARTICLE 3. ELIGIBILITY AND ENROLLMENT

R9-31-302. Applications

- A. Availability. The Administration shall make available program applications. Any person may request a program application.
- B. Submission of applications. An application is completed and submitted to the Administration:
 - 1. In person,
 - 2. By mail,
 - 3. By fax, or
 - 4. By other form approved by the Administration.
- C. Date of application. The provisions in A.A.C. R9-22-1405(B) apply to this Section. The date of application is the date the Administration or its designee receives an application that:
 - 1. Is signed by the person making the application,
 - 2. Includes the name of the person for whom assistance is requested, and
 - 3. Includes the address and telephone number of the person submitting the application.
- D. Completed application-
 - 1. The Administration shall consider an application complete when:
 - a. All questions are answered,
 - b. An enrollment choice is included, and
 - c. All necessary verification is provided by an applicant or an applicant's representative.
 - d. The provisions in A.A.C. R9-22-1405(C) apply to this Section.
 - 2. If the application is incomplete, the Administration shall do one or both of the following:
 - a. Contact an applicant or an applicant's representative by telephone to obtain the missing information required for an eligibility determination;
 - b. Mail a request for additional information to an applicant or an applicant's representative, allowing 10 days from the date of the request to provide the required additional information.
- E. Eligibility determination processing time-
 - 1. When an application is complete, the Administration shall mail the notification to the applicant regarding the eligibility determination no more than 30 days from the date of application except when there is an emergency beyond the Administration's control.
 - 2. An applicant shall provide the Administration with all requested information within 10 days from the date of the written request for the information. If an applicant fails to provide the requested information and fails to request an extension of the 10 day period or the request for extension is denied, the Administration shall deny eligibility.
- F. Waiting list. If the Administration stops processing an application because the monies are insufficient as specified in R9-31-301(C)(1), the Administration shall place an applicant on a waiting list and notify the applicant. When sufficient funding becomes available, the Administration shall contact an applicant on the waiting list and ask the applicant to submit a new application if the original application is more than 60 days old. Spaces shall be filled as a completed application is received and approved.

R9-31-303. Eligibility Criteria

Eligibility. To be eligible for the program, an applicant shall meet all the following eligibility requirements:

- 1. Age. Is under 19 years of age. A child's coverage shall continue through the month in which a child turns age 19 if the child is otherwise eligible;
- 2. Citizenship. Is a United States citizen or a qualified alien under A.R.S. § 36-2983;
- 3. Residency. Is a resident of the state of Arizona under A.R.S. § 36-2983. An Arizona resident is a person who currently lives in Arizona and intends to remain in Arizona indefinitely;
- 4. Income. Meets the income requirements in R9-31-304;
- 5. Cost sharing. Pays the cost sharing premium amount when premiums are required as specified in A.R.S. § 36-2982;

Notices of Proposed Rulemaking

6. Social security number. ~~The Administration shall not deny eligibility for Title XXI if an applicant does not provide or apply for a social security number except as specified under A.R.S. § 36-2983.~~ To be eligible, an applicant shall provide a SSN or apply for a SSN within 30 days after submitting an application.
7. Assignment. Assigns rights to any first- or third-party coverage of medical care as specified in 9 A.A.C. 31, Article 10;
8. Other federal program. Is not eligible for Title XIX or other federally operated or financed health care insurance program, except the Indian Health Service as specified in A.R.S. § 36-2983;
9. Inmate of a public institution. Is not an inmate of a public institution, as specified in A.R.S. § 36-2983;
10. Patient in an institution for mental disease. Is not a patient in an institution for mental disease at the time of application, or at the time of redetermination, as specified in A.R.S. § 36-2983;
11. Other health coverage. Is not covered under:
 - a. An employer's group health insurance plan,
 - b. Family or individual health insurance, or
 - c. Other health insurance;
12. State health benefits. Is not a member of a family that is eligible for health benefits coverage under a state health benefit plan based on a family member's employment with a public agency in the state of Arizona;
13. Prior health insurance coverage. Has not been covered by health insurance during the previous three months unless that health insurance was discontinued due to the involuntary loss of employment or other involuntary reason as specified in A.R.S. § 36-2983. The three months of ineligibility due to previous insurance coverage shall not apply to:
 - a. A newborn as defined in R9-31-309;
 - b. A Title XIX member as specified in 9 A.A.C. 22, Article 1;
 - c. An applicant who is seriously ill under R9-31-101 or chronically ill under A.R.S. § 36-2983;
 - d. A Title XXI member who loses insurance coverage;
 - e. A CRS member; or
 - f. A Native American member receiving services from IHS or a Tribal Facility.

R9-31-304. Income Eligibility

- A. Income standard. The combined gross income of the household income group members as specified in subsection (C) shall not exceed the percentage of the appropriate FPL for the Title XXI household income group size as specified in A.R.S. § 36-2981.
- B. ~~Countable income. The Administration shall count all income received during a month by the household income group members as specified in subsection (C) except income that is specified in subsections (D) and (E).~~ Calculating monthly income. The Administration shall calculate monthly income under A.A.C. R9-22-1419.01(B) through 1419.13.
- C. Title XXI household income group:
 1. For this Section:
 - a. "Child" means a person under 19 years of age or an unborn child.
 - b. "Parent" means a biological, adoptive, or step parent.
 2. The following related persons, when residing together, constitute a Title XXI household income group:
 - a. A married couple and children of either one or both;
 - b. An unmarried couple with a common child and other child of either one or both;
 - c. A married couple when one or both are under age 19 with no child;
 - d. A single parent and the single parent's child;
 - e. A child who does not live with a parent; and
 - f. The following persons, when living with a child:
 - i. A spouse of the child;
 - ii. A child of the spouse child;
 - iii. A child of the child; and
 - iv. The other parent of a child of the child.
 3. A person who is absent from a household shall be included in the child's household income group if absent:
 - a. For 30 days or less,
 - b. For the purpose of seeking employment or to maintain a job,
 - c. For serving in the military, or
 - d. For an educational purpose and the child's parent claims the child as a dependent on the parent's income tax return.
- D. Income disregards. When determining gross income of the household, the Administration shall disregard the following:
 1. Income specified in 20 CFR 416, Appendix to subpart K as of June 6, 1997, which is incorporated by reference and on file with the Office of the Secretary of State and the Administration. This incorporation by reference contains no future editions or amendments;

Notices of Proposed Rulemaking

2. Income paid according to federal law that prohibits the use of the income when determining eligibility for public benefits;
 3. Money received as the result of the conversion of an asset;
 4. Income tax refunds; and
 5. For a income, the Administration shall count only the net income of that self-employment, after deducting the expenses of producing that income, but not deducting income taxes or capital investments.
- E. Regular infrequent income. Income that is received regularly but less often than monthly shall be pro-rated over the number of months between payments.

ARTICLE 17. ELIGIBILITY AND ENROLLMENT FOR A PARENT

R9-31-1702. Application

- A. Application form. A parent who wants to apply for eligibility under this Article shall apply using an application approved by the Administration.
- B. Application process. For a parent of a child under R9-31-1701(C)(1)(a) an application shall be processed under A.A.C. R9-22-1405(A) through ~~(C)(2), (D) and (E)~~ (D)(2), (E), and (F), A.A.C. R9-22-1411(A) and (C), and A.A.C. R9-22-1407. For a parent of a child under R9-31-1701(C)(1)(b), an application shall be processed under R9-31-302(A) through (E).

NOTICE OF PROPOSED RULEMAKING

TITLE 17. TRANSPORTATION

**CHAPTER 3. DEPARTMENT OF TRANSPORTATION
HIGHWAYS**

PREAMBLE

- | <u>1. Sections Affected</u> | <u>Rulemaking Action</u> |
|------------------------------------|---------------------------------|
| R17-3-902 | Amend |
| R17-3-904 | Amend |
| R17-3-906 | Amend |
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. § 28-366
Implementing statute: A.R.S. § 28-7311; Laws 2003, Ch. 126, § 1
 3. **A list of all previous notices appearing in the Register addressing the proposed rules:**
Notice of Rulemaking Docket Opening: 9 A.A.R. 3149, July 18, 2003
 4. **The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
Name: Wendy S. LeStarge
Address: Administrative Rules Unit
Department of Transportation, Mail Drop 507M
3737 N. 7th Street, Suite 160
Phoenix, AZ 85014-5079
Telephone: (602) 712-6007
Fax: (602) 241-1624
E-mail: wlestarge@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 rules, including the agency's reasons for initiating the rulemaking:**
The logo sign program, created under A.R.S. § 28-7311, allows for the placing of logo signs (or specific service information signs) along the state highway system in order to provide motorists with service information, such as gas, food, lodging, and camping. The Arizona legislature recently amended the logo sign statute to include the additional category of "Attraction."

Arizona Administrative Register / Secretary of State
Notices of Proposed Rulemaking

A.R.S. § 28-7311(C) requires the Arizona Department of Transportation (“ADOT”) to institute rulemaking for the logo sign program. This rulemaking defines the term “attraction,” establishes the eligibility criteria for businesses to qualify for a logo sign, and sets other criteria for placing attraction logo signs.

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 rules are necessary to promote a statewide interest if the rules will diminish a previous grant of authority of a political subdivision of this state:

Not applicable

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

The interstate and rural logo programs are marketed and administered by a private contractor, as allowed under A.R.S. § 28-7311. Under the logo sign programs, the contractor markets the program to eligible businesses to lease space on a specific service information sign for a business’ logo. This rulemaking adds an additional category to the logo sign program eligibility and therefore should expand the available customer base of the contractor.

ADOT’s costs and benefits are not readily quantifiable. ADOT provides administrative oversight for the logo sign program, so its costs include the salaries for those employees overseeing the logo sign program or installation of signs as part of their duties. The motoring public benefits through increased convenience and reduced travel time for locating a participating business. Services may cost more due to the advertising costs passed to the motoring public consumer. The Arizona Department of Revenue should benefit through increased tax revenue due to increased sales from participating businesses.

Businesses that provide an attraction will benefit because they can qualify for a logo sign. There will be minimal costs for purchasing the sign and paying monthly lease payments. Businesses should benefit by increased revenue due to advertising by logo signs.

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: Wendy S. LeStarge
Address: Administrative Rules Unit
Department of Transportation, Mail Drop 507M
3737 N. 7th Street, Suite 160
Phoenix, AZ 85014-5079
Telephone: (602) 712-6007
Fax: (602) 241-1624
E-mail: wlestarge@dot.state.az.us

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

No oral proceeding is scheduled for this rulemaking. Written, faxed, e-mail comments, or requests for an oral proceeding may be made by contacting the analyst listed in item #4 between 8:00 a.m. and 4:30 p.m., Monday through Friday. If no oral proceeding is requested, the public comment period shall continue for 30 days from this notice’s publication date. This rulemaking’s public record will close at 4:30 p.m. on September 10, 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 rules follows:

TITLE 17. TRANSPORTATION

**CHAPTER 3. DEPARTMENT OF TRANSPORTATION
HIGHWAYS**

ARTICLE 9. HIGHWAY TRAFFIC CONTROL DEVICES

Section

- R17-3-902. Logo Sign Program
- R17-3-904. Logo Sign Requirements
- R17-3-906. Existing Leases

ARTICLE 9. HIGHWAY TRAFFIC CONTROL DEVICES

R17-3-902. Logo Sign Program

A. Definitions

“Attraction” means any of the following:

“Arena” means a facility that has a capacity of at least 5,000 seats and holds events at least 28 days of the year, and is a:

Stadium or auditorium;

Race track for automobile, boat, or animal racing; or

Fairground that has a tract of land where fairs or exhibitions are held, and permanent buildings that include bandstands, exhibition halls, livestock exhibition pens.

“Cultural” means an organized and permanent facility that is open to all ages of the public at least 180 days annually, and is:

A facility for the performing arts, exhibits, or concerts; or

A museum with professional staff, artistic, historical, or educational in purpose, that owns or utilizes tangible objects, cares for them, and exhibits them to the public.

“Educational” means a facility that is a:

Community college, regionally accredited college or university, or state university as prescribed in R17-3-901(A). Educational excludes a business or research park affiliated with a college or university;

Scientific institution, designated research area, or site of specialized research techniques and apparatus, accredited by a nationally recognized accreditation educational agency, and conducts regular tours; or

Zoological or botanical park that houses and exhibits living animals, insects, or plants to the public.

“Golf course” means a facility offering at least 18 holes of play. Golf course excludes miniature golf courses, driving ranges, chip-and-putt courses and indoor golf.

“Historic” means a structure, district, or site that is listed on the National or Arizona Register of Historic Places as being of historical significance, is of state or National significance, and includes an informational device to educate the public as to the facility’s historic features.

“Mall” means a shopping, antique, or outlet mall with at least 1,000,000 square feet or more of retail shopping area.

“Recreational” means a facility for physical exercise or enjoyment of nature that includes at least one of the following activities: walking, hiking, skiing, boating, swimming, picnicking, camping, fishing, tennis, horseback riding, ice skating, and climbing;

“Business” means a commercial enterprise that provides a specific service open for the general public, is located on a roadway within the required distance of an interstate or rural state highway, and is a primary or secondary business.

“Community logo plan” means a project aspect of the rural logo sign program, agreed to by the Department, the contractor, and a municipality outside an urbanized area to place specific service information signs on a rural state highway for the municipality.

“Contract” means a written agreement between the Department and a contractor to operate a logo sign program that describes the obligations and rights of both parties.

“Contractor” means a person or entity that enters into an agreement with the Department to operate a logo sign program and that is responsible for marketing, furnishing, installing, maintaining, and replacing specific service information signs.

“Department” means the Arizona Department of Transportation.

“Director” means the Director of the Arizona Department of Transportation or the Director’s designee.

“Exit ramp” means a roadway by which traffic may leave a controlled access highway to another highway.

“Food court” means a collective food facility that exists in one contiguous area and contains a minimum of three separate food service businesses.

“Highway” has the meaning in A.R.S. § 28-101(49).

“Interchange” means the point at which traffic on a system of interconnecting roadways that have one or more grade separations, moves from one roadway to another at a different level.

“Intersection” has the meaning in A.R.S. § 28-601(7).

“Interstate highway” has the meaning in A.R.S. § 28-7901(4).

“Interstate logo sign program” means a system to install and maintain specific service information signs on certain portions of an interstate highway as provided in A.R.S. § 28-7311(A).

“Lease agreement” means a written contract between a contractor and a responsible operator to lease space for a responsible operator’s logo sign on a contractor’s specific service information sign.

“Logo sign” means part of a specific service information sign consisting of a lettered board attached to a separate rectangular panel, and that displays an identification brand, symbol, trademark, name, or a combination of these, for a responsible operator.

“Major decision point” means a location at or before the point at which a rural state highway intersects with another rural state highway or a local roadway, that is within a municipality (except an urbanized area), and that the Department determines to be the point at which a driver must make a decision whether to stay on the highway or turn off onto the other highway or local roadway.

“Municipality” means an incorporated city or town.

“Primary business” means:

A gas service business that is within three miles of an intersection or exit ramp, and is in continuous operation to provide services at least 12 hours per day, seven days per week;

A food service business that is within three miles of an intersection or exit ramp terminal, is open for operation no later than 7:00 a.m., provides seating for at least 20, and is in continuous operation to provide service at least three meals per day (breakfast, lunch, and dinner) at least six days per week;

A lodging service business that is within three miles of an intersection or exit ramp terminal; ~~or~~

A camping service business that is within five miles of an intersection or exit ramp terminal; ~~or~~

An attraction business that is within three miles of an intersection or exit ramp terminal.

“Ramp terminal” means the area where an exit ramp intersects with a roadway.

“Responsible operator” means a person or entity that:

Owns or operates a business,

Has authority to enter into a lease, and

Enters into a lease for a logo sign through the interstate or rural logo sign program.

“Rural logo sign program” means a system to install and maintain specific service information signs on a rural state highway outside of an urbanized area, as provided in A.R.S. § 28-7311(B).

“Rural state highway” means any class of state highway, other than an interstate highway, located outside of an urbanized area as provided in A.R.S. § 28-7311(B).

“Secondary business” means a business as follows:

A gas service business that is within 15 miles of an intersection or exit ramp terminal, and in continuous operation to provide services at least eight hours per day, five consecutive days per week;

A food service business that is within 15 miles of an intersection or exit ramp terminal, and is in continuous operation to serve at least two meals per day (either breakfast and lunch, or lunch and dinner) for a minimum of five consecutive days per week;

A lodging service business that is within 15 miles of an intersection or exit ramp terminal; ~~or~~

A camping service business that is within 15 miles of an intersection or exit ramp terminal; ~~or~~

An attraction business that is within 15 miles of an intersection or exit ramp terminal.

“Specific service” means gas, food, lodging, ~~or~~ camping services; ~~or~~ attraction.

“Specific service information sign” means a rectangular sign panel that contains the following:

The words “GAS,” “FOOD,” “LODGING,” ~~or~~ “CAMPING,” or “ATTRACTION”;

Directional information; and

One or more logo signs.

“Straight-ahead sign” means a specific service information sign that provides additional directional guidance to a location, route, or building located straight ahead on a roadway, and that is located before a junction that is a major decision point.

“Trailblazing sign” means a specific service information sign that provides additional directional guidance to a location, route, or building from another highway or roadway.

“Urbanized area” has the meaning in A.R.S. § 28-7311(D).

Notices of Proposed Rulemaking

B. Logo sign program administration

1. The Department shall solicit offers, as provided in A.R.S. §§ 41-2501 through 41-2662, to select a contractor to operate a logo sign program.
2. The Department may contract separately for each program.
3. The contract shall specify the standards that a contractor shall use including the following:
 - a. Manual on Uniform Traffic Control Devices for Streets and Highways, USDOT/FHWA, 1988 current edition as adopted under A.R.S. § 28-641;
 - b. Arizona Department of Transportation Traffic Control Supplement, 1996 edition; and
 - c. Arizona Department of Transportation Standard Specifications, 2000 edition.
4. The Department shall approve the form of any lease agreement between the contractor and a responsible operator. The lease agreement shall include, by reference, the terms and conditions of the Department's contract with the contractor under A.R.S. §§ 41-2501 through 41-2662.

C. Eligibility criteria for businesses

1. Any business is ineligible for a logo sign if it already has a supplemental highway guide sign installed by the Department.
- ~~1-2.~~ Gas service business. To be eligible to place a logo sign, a gas service business shall:
 - a. Provide fuel, oil, and water for public purchase or use;
 - b. Provide restroom facilities and drinking water; and
 - c. Provide a telephone available for emergencies to the public during hours of operation.
- ~~2-3.~~ Food service business. To be eligible to place a logo sign, a food service business shall:
 - a. Provide restroom facilities for customers;
 - b. Provide a telephone available for emergencies to the public during hours of operation; and
 - c. If a food service business is part of a food court located within a shopping mall, the shopping mall may qualify as the responsible operator if the food court:
 - i. Complies with subsection ~~(C)(2)~~ (C)(3), and
 - ii. Has clearly identifiable on-premise signing consistent with the logo sign that is sufficient to guide motorists directly to the entrance to the food court.
- ~~3-4.~~ Lodging service business. To be eligible to place a logo sign, a lodging service business shall:
 - a. Provide five or more units of sleeping accommodations, and
 - b. Provide a telephone available for emergencies to the public during hours the lobby is open for registration.
- ~~4-5.~~ Camping service business. To be eligible to place a logo sign, a business providing camping facilities shall:
 - a. Be able to accommodate all common types of travel trailers and recreational vehicles;
 - b. Be equipped to handle a minimum of 15 travel trailers or recreational vehicles;
 - c. Provide drinking water and a sewer hook-up or dump station; and
 - d. Be available on a year-round basis unless camping in the general area is of a seasonal nature in which case the facilities in question shall be open to the public 24 hours per day, seven days per week during the entire season.
6. Attraction Business. To be eligible to place a logo sign, an attraction business shall:
 - a. Derive less than 50% of its sales from:
 - i. The sale of alcohol consumed on the premises, or
 - ii. Gambling.
 - b. Derive more than 50% of its sales or visitors during the normal business season from motorists not residing within a 25 mile radius of the business.
 - c. Provide at least 10 parking spaces.
 - d. Provide restroom facilities and drinking water.
 - e. Be in continuous operation at least six hours per day, six days per week.
 - f. Have a minimum annual attendance of 5,000, and
 - g. Meet the definition of attraction in R17-3-902(A).

D. Ranking

1. If more than six eligible businesses providing the same specific service request lease space for a logo sign on one specific service information sign, the contractor shall use the following ranking criteria to determine which businesses are awarded a lease:
 - a. The business closest to an intersection or exit ramp terminal shall receive first priority,
 - b. A gas service business or a food service business that provides the most days and hours of service shall receive second priority,
 - c. A food service business that provides the most indoor seating capacity shall receive third priority, and
 - d. A business that does not have an off-premise advertising sign to direct motorists to its business within five miles of where the specific service information sign is to be located shall receive fourth priority.
2. If two or more businesses have the same ranking in qualifications, the contractor shall award a lease to the first business that requests a logo sign. The contractor shall establish a waiting list for other businesses in sequence of request.

3. The contractor shall not renew the lease of a responsible operator if another eligible business with higher priority requests lease space for a logo sign.
- E. Secondary businesses**
1. Lease limitations. For a secondary business, the contractor may enter into a lease for up to five years or renew a lease for up to five years, with the following terms:
 - a. The responsible operator is guaranteed a term of two years, providing the responsible operator complies with all other terms of the lease;
 - b. After the two-year period, the contractor shall terminate the lease and remove the logo sign if another eligible business with higher priority requests lease space for a logo sign; and,
 - c. The contractor shall notify the responsible operator at least six months before terminating the lease and removing the logo sign.
 2. The contractor shall display the following additional information on a specific service information sign for a secondary business, as space allows, based on the following ranking order:
 - a. Distance,
 - b. Days and hours of operation, and
 - c. Seasonal operation.
- F. Contractor responsibility**
1. The contractor shall follow all Department design standards and specifications for all sign panels, supports, and materials, as provided in the contract.
 2. The contractor shall ensure that a business complies with all criteria established in this Section. The contractor shall not enter into a lease agreement or renew a lease agreement if the criteria are not met. If a responsible operator becomes ineligible for a logo sign, the contractor shall remove the logo sign within 20 days after notifying the responsible operator as provided in the lease.
 3. The contractor shall require that a responsible operator certify in writing to the contractor that the responsible operator will comply with all applicable federal, state, and local laws, ordinances, rules, and regulations.
 4. The contractor shall not place a specific service information sign so as to obstruct or detract from a traffic control device.
 5. The contractor shall not remove or relocate an existing traffic control device to accommodate a specific service information sign without prior written approval by the Department, or a local authority under A.R.S. § 28-643.
 6. The contractor shall provide a copy of the signed lease agreement to the responsible operator. The responsible operator shall deliver the logo sign to the contractor for installation, or contract with the contractor to fabricate the logo sign to the responsible operator's and the Department's specifications.
 7. The contractor shall return any pre-paid lease payments to the responsible operator if the responsible operator's logo sign is not erected for reasons caused by the Department or the contractor.
 8. The contractor shall obtain an encroachment permit under R17-3-702 before erecting a specific service information sign along a state highway.
 9. If the contractor requests an encroachment permit under R17-3-702, the Department's staff shall decide the best placement of a specific service information sign and cooperate with the contractor to provide information to the motoring public as prescribed in subsection (E)(2).
 10. If a logo sign program is terminated, the contractor shall:
 - a. Notify a responsible operator by certified mail of the termination and the location where the responsible operator may claim its logo sign,
 - b. Remove all sign panels and supports, and
 - c. Refund any lease payments on a pro rated basis to each responsible operator.

R17-3-904. Logo Sign Requirements

- A.** Urban area. Except as prescribed in subsection (A)(4) or R17-3-903, the contractor shall not place a specific service information or directional sign on any highway in an urbanized area, which includes the following:
1. Phoenix:
 - Interstate 10, Agua Fria River bridge to Gila River Indian Reservation boundary (milepost 161.68);
 - Interstate 17, Skunk Creek bridge to junction Interstate 10;
 - State Route 51;
 - US 60, Beardsley Canal to Ellsworth Road (milepost 191.40);
 - State Route 85, 17th Avenue to 15th Avenue;
 - State Route 87, Chandler south city limit (milepost 162.82) to Salt River bridge;
 - State Route 88, US 60 to 200 feet north of Tomahawk Road (milepost 197.50);
 - State Route 101 loop;

State Route 143;
State Route 153;
State Route 202 loop; or
State Route 303 loop.

2. Tucson:

State Business 19, milepost 59.00 (between Hughes Plant Road and Los Reales Road) to junction Interstate 10;
Interstate 19, San Xavier Indian Reservation boundary (milepost 57.96) to junction Interstate 10;
State Route 86, milepost 167.83 (between Century Road and Old Ajo Way) to State Business 19;
State Route 77, junction Interstate 10 to Oro Valley north city limit (milepost 84.16); or,
State Route 210; or

3. Any other urbanized area with a population of 100,000 or more.

4. Boundary changes. If the boundaries of an urbanized area, as identified in a subsequent decennial census, are relocated so that an intersection, interchange, or exit ramp is no longer eligible for the logo sign program, the Department shall allow the logo signs within the revised urbanized boundaries to remain until the minimum lease obligations between the contractor and a responsible operator have been fulfilled.

B. Number of signs allowed. ~~Only one specific service information sign for each category of specific service is~~ Only four specific service information signs are allowed on an interstate or rural state highway to the approach to an intersection, interchange, or exit ramp, as shown in Illustrations A and B.

1. Each specific service information sign may contain a maximum of six logo signs.

2. Only one specific service for each category of specific service is allowed on an interstate or rural state highway to the approach to an intersection, interchange, or exit ramp. The contractor may combine categories of specific services as prescribed in subsection (F).

C. Sign sequence and spacing

1. The contractor shall install successive specific service information signs in the direction of travel as shown in Illustrations A and B:

- a. Camping ~~or Attraction~~,
- b. Lodging,
- c. Food, and
- d. Gas.

2. If the approach to an intersection, interchange, or exit ramp on an interstate or rural state highway has insufficient space in a single direction for four specific service information signs, priority shall be in the following order, as shown in Illustration A:

- a. Gas,
- b. Food,
- c. Lodging, and
- d. Camping ~~or Attraction~~.

D. If a responsible operator operates on a seasonal basis, the contractor shall:

- 1. Remove or cover the logo sign during the off-season, or
- 2. Display the dates of operation, if additional information is not required under R17-3-902(E)(2).

E. If the Department requires that a specific service information sign be moved due to construction or reconstruction of transportation facilities, or the placement of other signs or traffic control devices, the standards of the Manual on Uniform Traffic Control Devices shall apply as to new placement.

F. Combination signs

1. The contractor may combine two categories of specific services on a specific service information sign, as shown in Illustration C, if:

- a. The contractor does not reasonably expect that more than three businesses for each service will request a logo sign within five years from the time of installing the combination sign, ~~or~~ ;
- b. The approach to an intersection, interchange, or exit ramp on an interstate or rural state highway has insufficient space in a single direction for four specific service information signs: ~~;~~ or
- c. Businesses for each of the five categories of specific services request a logo sign.

2. A combination sign shall contain at least one logo sign for each category of specific service displayed.

3. The contractor shall not display a logo sign on a combination sign if the specific service category advertised by the logo sign already exists on a specific service information sign on the approach to the intersection, interchange, or exit ramp.

G. Trailblazing signs

1. The contractor shall install a trailblazing sign for a responsible operator along a highway if the responsible operator's business is not located on and is not visible from an intersection with the highway as directed from the specific service information sign.
2. The contractor may locate a trailblazing sign near all intersections where the direction of the route changes or where a motorist may be uncertain as to which road to follow.
3. A trailblazing sign is limited to six logo signs.
4. The contractor shall obtain written approval from the local governing authority to install and maintain a trailblazing sign along a highway that is not under the Department's maintenance jurisdiction.
5. The contractor shall not install a logo sign until all necessary trailblazing signs have been installed.
6. A trailblazing sign shall indicate by arrow the direction to the responsible operator's business.
7. A trailblazing sign may:
 - a. Duplicate the logo sign or specific service information sign, or both;
 - b. Consist of two lines of text; or
 - c. Include the category of specific service and distance to the responsible operator's business.

H. A logo sign shall comply with A.R.S. § 28-648. Descriptive advertising words, phrases, or slogans are prohibited on a logo sign, except:

1. If a responsible operator does not have an official trademark or logo, the responsible operator may display on its logo sign the name indicated in its partnership agreement, incorporation documents, or other documentation.
2. Words to identify alternative fuel availability, including "diesel," "propane," "natural gas," and "alcohol" are allowed on a logo sign for a gas service business.

R17-3-906. Existing Leases

~~A lease in existence on the effective date of February 7, 2003 is not affected by this rulemaking. Any changes to R17-3-902 through R17-3-905 shall not affect a responsible operator's existing lease before the lease expires.~~

NOTICE OF PROPOSED RULEMAKING

TITLE 18. ENVIRONMENTAL QUALITY

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

PREAMBLE

1. Sections Affected

R18-2-702

Rulemaking Action

Amend

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

Authorizing and Implementing statutes: A.R.S. §§ 49-104(A)(11), 49-404, and 49-425

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

Notice of Rulemaking Docket Opening: 9 A.A.R. 2282, July 3, 2003

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

Name: Kevin Force, Air Quality Division

Address: ADEQ
1110 W. Washington
Phoenix, AZ 85007

Telephone: (602) 771-4480 (Any ADEQ number may be reached in state by dialing 1-800-234-5677 and asking for the seven digit extension.)

Fax: (602) 771-2366

E-mail: kfl@ev.state.az.us

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

Summary. ADEQ is proposing to revise R18-2-702 to establish a statewide 20% opacity limit for certain stationary point source categories. The proposed rule also sets forth a process by which a source may petition the Director for an alternative opacity limit. The proposed revisions respond to the recent EPA disapproval to R18-2-702 as a revision of the Arizona State Implementation Plan.

Background. On September 23, 2002, EPA disapproved R18-2-702 as a revision of the Arizona State Implementation Plan (SIP), and directed Arizona to correct deficiencies in the rule (67 FR 59546). EPA found R18-2-702 deficient in three respects: its scope of applicability, the failure of a 40% opacity limit to meet Reasonably Available Control Measures (RACM) requirements for moderate PM₁₀ nonattainment areas, and the Director's discretionary power to relax the opacity standard without EPA approval. EPA will impose sanctions on Arizona if certain deficiencies are not corrected and approved by EPA by April 23, 2004.

Current Proposal. No rule revisions were necessary to correct the scope of applicability deficiency, which will be discussed in the background of the SIP revision. ADEQ's proposed amendment of R18-2-702 to impose a statewide 20% opacity standard would satisfy the RACM requirement deficiency. Finally, ADEQ is proposing revisions to include EPA review and approval of alternative opacity standards approved by the Director in nonattainment areas.

ADEQ has notified and solicited comment from over 130 stakeholders and interested parties about this proposed rule in an effort to create a rule that addresses the needs of both the general public and the regulated community. They range from state, federal, and local governments and agencies to regulated businesses and environmental groups. Stakeholder meetings were regularly attended by 20 or more representatives from various parties. The proposed changes to R18-2-702 are the result of this extensive cooperative effort with stakeholders and other interested parties.

Although EPA has clarified that it is only requiring R18-2-702 to meet RACM for PM₁₀ nonattainment areas, this proposed rule imposes a statewide general opacity limit of 20%, and outlines the process by which sources can receive an alternative opacity standard, subject to the Director's discretion and, in the case of nonattainment areas, the review and approval of the EPA. The proposed rule allows three months from the expected effective date of the rule (January 15, which is two months after G.R.R.C.'s anticipated approval), for submission of a petition for an alternative limit. This time should allow sources to assemble the documentation necessary to show a genuine need for an alternative limit, and give sources the opportunity, in their documentation, to suggest what alternative opacity limit they might best be able to achieve. In order to obtain an accurate count of sources that may apply for an alternative opacity limit, ADEQ requests any source that might petition for one to indicate so in a comment to this rule.

In research over the past few months, ADEQ found that 20% opacity or lower is being applied throughout the country for all types of sources. Because many of the source types affected (example: sand and gravel operations) operate throughout Arizona, 20% is reasonable to apply statewide in Arizona without unduly burdening the regulated community. ADEQ expects the rule to actually impact very few sources in attainment areas. Moreover, a statewide 20% opacity limit best serves the public health and welfare. Enforcement of a statewide limit would limit the problem of transport of pollutants from attainment to nonattainment areas. This is especially important for particulates, which many times pollute in nearby areas more than being transported long distances.

ADEQ also finds that it would be difficult and inefficient for both sources and regulators to keep track of the correct standards if the state were divided up further into an interlocking patchwork of contiguous 20% and 40% areas. Maricopa County has made the same choice: although it contains a PM₁₀ nonattainment area, county regulators have made 20% opacity the general limit throughout the entire county.

Because some sources in attainment areas may not be as familiar with the rulemaking process as others, the proposed rule gives sources in attainment areas two years from the expected date of EPA approval to comply. Thus, affected sources in attainment areas planning to make equipment changes will have two full business infrastructure cycles in which to gather capital, conduct tests, design and implement controls necessary to comply with the 20% limit, if they don't apply for an alternative limit. ADEQ expects that it will reopen, or revoke and reissue permits that contain 40% opacity limits from the former rule under R18-2-321, and R18-2-325(B)(5).

A statewide 20% opacity limit would also serve economic equity and efficiency. Competition might be adversely affected by the application of differing opacity limits based on attainment status. If sources, particularly portable sources, are able to relocate just outside a nonattainment area in order to avoid compliance costs associated with the lower opacity limit, those sources would enjoy an unfair advantage over those remaining on the nonattainment side of that boundary. They would receive the benefits of lower compliance costs, yet continue to impart proportionately greater damage to the environment and human health.

During workshops on this rule, some sources commented that exceptions to the 20% opacity standard should be written directly into R18-2-702 for certain source conditions related to startup, shutdown, malfunction. ADEQ notes that it already has rule language that covers these situations in R18-2-310, Affirmative Defenses for Excess Emissions Due to Malfunctions, Startup, and Shutdown. In addition, certain sources requested exceptions written into the rule for more routine opacity variations related to "load-shifting" that is, increasing or decreasing the amount of fuel being sent into the power generating equipment in order to respond to a need for increased or decreased power. ADEQ believes that exceptions for such routine operations would defeat the purpose of having a general opacity standard, and would be best handled under an alternative opacity limit. ADEQ expects that the alternative limits it approves

under subsection (D) would only apply during those periods where the source shows it cannot meet the 20% limit, and not during the entire operating period.

Finally, in subsection (I), ADEQ is proposing a limited, emergency fuel-switching exception to the general opacity standard for electrical utilities, to be used during emergency natural gas shortages. During these shortages, it is expected that diesel fuel would be used as a temporary fuel, and that during switching to diesel, opacity could temporarily rise above 20%. The proposed rule is similar to a recent Maricopa County rule that allows exceptions to CO, VOC, NOx and opacity standards under similar circumstances.

Subsection-by-Subsection Explanation for the Proposed Rule.

- R18-2-702(A) This subsection clarifies those sources to which the rule is applicable.
- R18-2-702(B) This subsection prescribes the opacity limits for both attainment and nonattainment areas, and sets the effective date of the Rule.
- R18-2-702(C) Unchanged
- R18-2-702(D) This subsection establishes the procedure by which sources in attainment and unclassifiable areas can petition the Director for an alternative opacity limit. All petitions must include a report showing that the source has exercised all practical means of reducing opacity and finds retrofit of the facility to be “technically or economically infeasible.”¹
- [¹Technical and economic feasibility are two of the criteria used to determine whether a control method meets the requirements of RACM/RACT. See, 63 FR 15931-15933, (April 1, 1998) Pro-mulgation of Federal Implementation Plan for Arizona-Phoenix Metro Area Moderate Area PM-10; Disapproval of State Implementation Plan for Arizona-Phoenix Moderate Area PM-10; Proposed Rule. See also, 59 FR 156, 157 (August 16, 1994) State Implementation Plan for Serious PM-10 Nonattainment Areas, and Attainment Date Waivers for PM-10 Nonattainment Areas Generally; Addendum to the General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990.]
- R18-2-702(E) This subsection establishes how the Director may grant the alternative opacity limit for sources which meet the requirements of subsection (D), and provide for its implementation as a proposed significant permit revision.
- R18-2-702(F) This subsection establishes the procedure by which sources in nonattainment areas can petition the Director for an alternative opacity limit. The source must meet all requirements outlined in subsection (D), and allow the presence of the Administrator during stack tests.
- R18-2-702(G) This subsection sets the circumstances under which the Director may grant a petition for an alternative opacity limit under subsection (F), and includes submittal of the opacity limit as a proposed revision to the state implementation plan to the EPA for review and approval.
- R18-2-702(H) Unchanged
- R18-2-702(I) This subsection creates an exception to the general opacity limit for emergency fuel-switching, such as from natural gas to diesel fuel for sources in attainment or nonattainment areas.

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

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

A. Rule Identification

This rulemaking amends R18-2-702, “General Provisions,” in Title 18, Chapter 2, Article 7. The proposed rule sets a statewide 20 percent opacity limit for sources that do not have an opacity limit specified elsewhere and whose emissions are not governed by new source performance standards (NSPS), and outlines the procedure by which a source can obtain an adjustment to its opacity standard.

B. Entities Directly Impacted

Entities directly impacted by this rulemaking include certain permitted sources, pollution control vendors, contractors, consultants, lawyers, ADEQ, private persons and consumers. ADEQ estimates that as few as 20-30 sources might be affected by this rulemaking. Although many industry categories, including stationary rotating machinery (oil- or coal-fired generators and turbines), lime manufacturing plants, nonferrous metals industry sources, gravel or

crushed stone processing plants, sand blasting operations, and cotton gins are potentially subject to R18-2-702, most of these sources will be unaffected by this rule as they are already subject to 20%, or lower, opacity standards, or are regulated by New Source Performance Standards (NSPS), Title 40, Part 60 of the Code of Federal Regulations. In addition, the rule includes a process by which those sources that are affected might apply for an alternative opacity limit, thus lessening the potential impact even further.

C. Probable Costs and Benefits

1) Costs to the state of Arizona

If ADEQ does not correct the R18-2-702 deficiencies so that EPA can approve them by April 23, 2004, Arizona will be subject to sanctions under § 179 of the Clean Air Act (CAA). Sanctions include loss of highway funds and stricter emission offset requirements for major sources. In addition, under § 110(c) of the CAA, EPA would then need to promulgate a Federal Implementation Plan no later than October 23, 2004.

2) Potential Costs and Benefits to the Public

The most obvious benefit arising from promulgation of this rule is reduction in the harmful effects of air pollution, most notably particulates. Air pollution harms lung function, damages lung tissue, and increases respiratory symptoms, such as coughing, shortness of breath, wheezing and asthma attacks, and can impair the body's immune system response to inhaled particles. Results may include restricted activities, and work time and revenues lost due to increased hospital admissions, illness and death. PM associated health risks occur even more frequently in susceptible subpopulations, such as the elderly, children with asthma, and persons with cardiopulmonary disease, and may contribute to up to 65,000 excess deaths in the U.S. annually (STAPPA and ALAPCO, *Controlling Particulate Matter Under the Clean Air Act: A Menu of Options, July 1996*). Even very low concentrations of particulate matter may increase risk of early death, particularly in elderly populations with preexisting cardiopulmonary diseases (STAPPA and ALAPCO, *supra*). Chronic obstructive pulmonary disease (COPD), a major cause of morbidity and mortality in the U.S., cost the country more than 32 billion dollars in 2002, a figure which does not include costs attributable to asthma (American Lung Assoc., "Trends in Chronic Bronchitis and Emphysema: Morbidity and Mortality," Epidemiology and Statistics Unit, Research and Scientific Affairs, March 2003). Notably, asthma death rates in Arizona equaled or exceeded U.S. rates from 1991-1998. In addition, in 1998, an estimated 316,200 Arizonans suffered breathing discomfort and asthma related stress (Arizona Department of Health Services, "Asthma Control Program," Office of Nutrition and chronic Disease Prevention Services, October, 2002). Therefore, ADEQ expects a statewide reduction in the opacity limit to translate into cost-saving benefits to the general public by reducing emissions-related adverse health effects and the concurrent lost revenue and health care costs.

In addition to direct health-related effects, a statewide opacity limit of 20% will affect the general quality of life, particularly for those persons living near sources. A lower opacity limit will concurrently increase visibility and enhance the public's enjoyment of Arizona's natural resources.

3) Potential Costs and Benefits to the Regulated Community

Although each regulated facility is unique, the costs of compliance associated with the new rule are similar and may include: new capital equipment or modification of existing equipment, adjusting or enhancing operations and maintenance; replacement or modification of processes and designs; and indirect and administrative costs. Compliance might also result, however, in a variety of offsetting financial benefits for the source. They range from lower operation and maintenance costs, as a result of updated and more efficient equipment, to fewer man-hours lost and lower health care costs due to a decrease in pollution-exacerbated illnesses. ADEQ is specifically requesting in this preliminary EIS source-specific information on costs to achieve a 20% opacity, and any intentions to petition for an alternative opacity limit.

ADEQ has received general cost information from one source during the stakeholder process. This source, an older coal-fired electric power plant has indicated that it may cost up to \$11 million to design and construct a baghouse in order to comply with a 20% opacity limit. Although the source is investigating the possibility of petitioning for an alternative opacity limit, it is possible that the baghouse will help it meet federal air pollution requirements coming due over the next several years.

D. Small Business Analysis

Several small business categories were represented during the stakeholder process for this proposed rule. ADEQ has not identified all small businesses that could be affected by this rulemaking, however, those who did participate did not express any reservations about compliance. ADEQ has considered a variety of methods to reduce the impact of this rule on small businesses, including five methods prescribed by A.R.S. § 41-1035: establish less stringent compliance or reporting requirements; establish less stringent schedules or deadlines for compliance or reporting requirements; consolidate or simplify the rulemaking's reporting requirements; establish performance requirements to replace design or operational standards; or exempt them from some or all of the rule requirements. For the reasons stated in item #5 of the preamble, and due to the inherent difficulty in identifying all sources which are small businesses, including the possibility that such status may change from year to year, ADEQ has determined that it is not feasible to apply a separate opacity standard to small businesses.

Notices of Proposed Rulemaking

ADEQ does employ an ombudsman in the Office of Media Relations, to whom small businesses may address their issues with regard to compliance with the rule.

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: September 8, 2003
Time: 1:30 p.m.
Location: ADEQ
1110 W. Washington, Conference Room 250
Phoenix, AZ
Nature: Oral Proceedings with opportunity for formal comment on the record
Close of Comment: 5:00 p.m., Friday, September 12, 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 rule:

Not applicable

13. The full text of the rule follows:

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 2. DEPARTMENT OF ENVIRONMENTAL QUALITY
AIR POLLUTION CONTROL

ARTICLE 7. EXISTING STATIONARY SOURCE PERFORMANCE STANDARDS

Section
R18-2-702. General Provisions

ARTICLE 7. EXISTING STATIONARY SOURCE PERFORMANCE STANDARDS

R18-2-702. General Provisions

- A. The provisions of this Article shall only apply to ~~existing sources~~ a source that is all of the following:
1. An existing source, as defined in R18-2-101;
 2. A point source; for the purposes of this Section, "point source" means a source of air contaminants that has an identifiable plume or emissions point; and
 3. A stationary source, as defined in R18-2-101.
- B. Except as otherwise provided in this ~~Article~~ Chapter relating to specific types of sources, or in subsection (I), the opacity of any plume or effluent, from a source described in subsection (A), as determined by Reference Method 9 in 40 CFR 60, Appendix A, shall be as follows:
- ~~1. Shall not be greater than 40% and~~
1. Unless an alternative opacity limit is approved by the Director and the Administrator as provided in subsections (F) and (G), after the effective date of this rule, opacity shall not be greater than 20 percent in an area that is nonattainment or maintenance for any particulate matter standard;
 - ~~2. Shall be determined by reference Method 9 in 40 CFR 60, Appendix A.~~

Notices of Proposed Rulemaking

2. Until midnight, April 23, 2006, opacity shall not be greater than 40 percent in an area that is attainment or unclassifiable for each particulate matter standard; and
 3. Except as provided in subsections (D) and (E), after April 23, 2006, opacity shall not be greater than 20 percent in any area that is attainment or unclassifiable for each particulate matter standard.
- C. Where the presence of uncombined water is the only reason for the exceedance of any visible emissions requirements in this Article, such exceedance shall not constitute a violation.
- D. A person owning or operating an air pollution source in an area that is attainment or unclassifiable for each particulate matter standard may ask petition the Director for a determination on meeting the requirements of the an alternative applicable opacity standard limit. The petition shall be submitted to ADEQ by April 15, 2004 and shall contain items 1 through 6 below if the unit for which the alternative limit is requested is subject to a stack test, and items 4 through 6, if the unit is either not subject to a stack test, or a valid stack test cannot be conducted on the unit during the times when an alternative opacity limit would apply:
1. The owner or operator shall submit the written reports of the results of the performance tests, the opacity observation results, and observer certification.
 1. Documentation that the source conducted concurrent EPA Reference Method stack testing and visible emissions readings or is utilizing a continuous opacity monitor. The particulate mass emission test results shall show clear demonstration of compliance with the applicable particulate mass emission limitation by being at least 10% below the limit. For multiple units which are normally operated together and whose emissions vent through a single stack, simultaneous particulate testing of each unit shall be conducted. Each control device shall be in good operating condition and operated consistent with good practice for minimizing emissions.
 2. If the Director finds that the facility is in compliance with all applicable standards for the performance test and still fails to meet the applicable opacity standard, he shall notify the owner or operator of the finding.
 2. Evidence that the stack tests were conducted according to R18-2-312, and witnessed by the Director.
 3. The owner or operator may petition the Director within 10 days of receipt of notification, asking the Director to make an appropriate adjustment to the opacity standard for the facility.
 3. Evidence that the affected facility and the associated air pollution control equipment were operated and maintained to the maximum extent practicable to minimize the opacity of emissions during the stack tests.
 4. The Director shall grant the petition after public notice and opportunity for public hearing takes place and upon a demonstration by the owner or operator that:
 - a. The affected facility and the associated air pollution control equipment were operated and maintained in a manner to minimize the opacity of emissions during the performance test.
 - b. The performance tests were performed under the conditions established by the Director.
 - e. The affected facility and associated air pollution control equipment were incapable of being adjusted or operated to meet the applicable opacity requirement.
 4. Documentation that the affected facility and associated air pollution control equipment were incapable of being adjusted or operated to meet the applicable opacity standard. This shall include:
 - a. Relevant information on the process operating conditions and the control device's operating conditions during the opacity or stack tests;
 - b. A detailed statement or report demonstrating that the source has investigated all practicable means of reducing opacity and has utilized control technology that is reasonably available considering technical and economic feasibility; and
 - c. An explanation why the source cannot meet the present opacity limit although it is in compliance with the applicable mass rule.
 5. The Director shall establish an opacity standard for the affected facility based on the determination made in subsection (D)(4). The opacity standard shall be set at a level indicated by the performance and opacity tests, providing that the source will be able to meet the mass or concentration standard and the opacity standard at all times. Such opacity standard shall be incorporated as a condition of the permit for the affected facility.
 5. If there is an opacity monitor, any certification and audit reports as required by all applicable subparts in 40 CFR 60 and in Appendix B, Performance Specification 1.
 6. The Director shall publish the opacity standard once in 1 or more newspapers of general circulation in the county or counties concerned.
 6. A certification by a responsible official of the truth, accuracy, and completeness of the petition. This certification shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.
- E. If the Director receives a petition under subsection (D) and determines that the requirements of (D)(1) through (D)(6) have been met, the Director shall approve or deny the petition by October 15, 2004.
1. If the petition is approved, the Director shall include an alternative opacity limit in a proposed significant permit revision for the source under R18-2-320 and R18-2-330. The proposed alternative opacity limit shall be set at a value that has been demonstrated during, and not extrapolated from, testing, except that an alternative opacity limit under this

Arizona Administrative Register / Secretary of State
Notices of Proposed Rulemaking

Section shall not be greater than 40%. For multiple units which are normally operated together and whose emissions vent through a single stack, any new alternative opacity limit shall reflect the opacity level at the common stack exit, and not individual in-duct opacity levels.

2. If the petition is denied, the source shall comply with the 20% opacity limit by April 23, 2006, or apply for a compliance schedule under R18-2-309(5)(c)(iii) in a significant permit revision.

F. A person owning or operating an air pollution source in an area that is nonattainment or maintenance for any particulate matter standard may petition the Director for an alternative opacity limit. The petition must be submitted to ADEQ by April 15, 2004, and shall contain the items required by subsections (D)(1) through (D)(6):

1. Except that in (D)(2), the stack tests shall be conducted with an opportunity for the Administrator to also be present, and
2. Except that in (D)(4)(b), the detailed statement or report shall demonstrate that the alternative opacity limit fulfills the Clean Air Act requirement for reasonably available control technology.

G. If the Director receives a petition under subsection (F) and determines that the requirements of subsections (F)(1) and (F)(2) have been met, the Director shall approve or deny the petition by October 15, 2004. If the petition is approved, the Director shall include an alternative opacity limit in a proposed revision to the applicable implementation plan, and submit the proposed revision to EPA for review and approval.

~~E-H.~~ The process weight rate utilized in this Article shall be determined as follows:

1. For continuous or long run, steady-state process sources, the process weight rate shall be the total process weight for the entire period of continuous operation or for a typical portion thereof, divided by the number of hours of such period or portion thereof.
2. For cyclical or batch process sources, the process weight rate shall be the total process weight for a period which covers a complete operation or an integral number of cycles, divided by the hours of actual process operation during such period.

I. For excepted sources, opacity may exceed the applicable limits established in subsection (B) for up to one hour during the start up of switching to or back from an emergency fuel; however, opacity shall not exceed 40% for any six minute averaging period in this one hour period, provided the Director finds that the owner or operator has, to the extent practicable, maintained and operated the source of emissions in a manner consistent with good air pollution control practices for minimizing emissions. The one hour period shall begin at the moment of startup of fuel switching. For the purposes of this subsection:

1. Excepted sources shall include only the following for which construction commenced prior to May 10, 1996:
 - a. Electric utility steam generating units or cogeneration steam generating units used to generate electric power that has a heat input of equal to or greater than 100 million (MM) Btu/hour (29 megawatts); and
 - b. Electric utility stationary gas turbines with a heat input at peak load equal to or greater than 10 MM Btu/hour (2.9 MW) based upon the lower heating value of the fuel.
2. "Fuel switching" means the act of changing from one type of fuel to a different type of fuel.
3. "Emergency fuel" means fuel fired only during circumstances such as natural gas emergency, natural gas curtailment, or breakdown of delivery system such as an unavoidable interruption of supply that makes it impossible to fire natural gas in the unit. Fuel is not considered emergency fuel if it is used to avoid either peak demand charges or high gas prices during on-peak price periods or due to a voluntary reduction in natural gas usage by the power company.
4. "Natural gas curtailment" means an interruption in natural gas service, such that the daily fuel needs of a combustion unit cannot be met with natural gas available due to one of the following reasons, beyond the control of the owner or operator:
 - a. An unforeseeable failure or malfunction, not resulting from an intentional act or omission that the governing state, federal or local agency finds to be due to an act of gross negligence on the part of the owner or operator;
 - b. A natural disaster;
 - c. The natural gas is curtailed pursuant to governing state, federal or local agency rules or orders; or
 - d. The serving natural gas supplier provides notice to the owner or operator, that, with forecasted natural gas supplies and demands, natural gas service is expected to be curtailed pursuant to governing state, federal or local agency rules or orders.
5. Determination of whether good air control practices are being used shall be based on information provided to the Director upon request, which may include, but is not limited to, the following:
 - a. Monitoring results;
 - b. Opacity observations;
 - c. Review of operating and maintenance procedures; and
 - d. Inspection of the source.