

NOTICES OF PROPOSED RULEMAKING

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

NOTICE OF PROPOSED RULEMAKING

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 21. BOARD OF OPTOMETRY

[R07-293]

PREAMBLE

1. Sections Affected

Rulemaking Action

R4-21-101	Amend
R4-21-102	Renumber
R4-21-102	Amend
R4-21-103	Renumber
R4-21-103	Amend
Table 1	Amend
R4-21-201	Amend
R4-21-202	Renumber
R4-21-202	New Section
R4-21-203	Renumber
R4-21-203	Amend
R4-21-204	Renumber
R4-21-204	New Section
R4-21-205	Renumber
R4-21-205	Amend
R4-21-206	Renumber
R4-21-206	New Section
R4-21-207	Renumber
R4-21-207	Amend
R4-21-208	Renumber
R4-21-208	Amend
R4-21-209	Renumber
R4-21-209	Amend
R4-21-210	New Section
R4-21-211	New Section
R4-21-212	Renumber
R4-21-212	Amend
R4-21-213	New Section
Article 3	Amend
R4-21-301	Repeal
R4-21-301	Renumber
R4-21-301	Amend
R4-21-302	Amend
R4-21-303	Amend
R4-21-304	Renumber
R4-21-304	New Section
R4-21-305	Renumber
R4-21-305	Amend
R4-21-306	Renumber
R4-21-306	Amend
R4-21-307	Renumber

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R4-21-307	Amend
R4-21-308	Renumber
R4-21-308	New Section
R4-21-309	Renumber
R4-21-309	Amend
Article 5	Repeal
R4-21-501	Repeal
R4-21-502	Repeal
R4-21-503	Repeal
R4-21-504	Repeal

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

Authorizing statute: A.R.S. § 32-1704(A)

Implementing statute: A.R.S. §§ 32-1701 et seq.

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

Notice of Rulemaking Docket Opening: 12 A.A.R. 4348, November 24, 2006

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

Name: Margaret Whelan
Address: Board of Optometry
1400 W. Washington St., Suite 230
Phoenix, AZ 85007
Telephone: (602) 542-3095
Fax: (602) 542-3093
E-mail: Margaret.whelan@optometry.az.gov

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

The Board is updating its rules to make them more clear, concise, and understandable and consistent with statute and current agency and industry practice.

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

None

7. A showing of good cause why the 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 rulemaking makes no substantive changes. It will have minimal economic impact.

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

Name: Margaret Whelan
Address: Board of Optometry
1400 W. Washington St., Suite 230
Phoenix, AZ 85007
Telephone: (602) 542-3095
Fax: (602) 542-3093
E-mail: Margaret.whelan@optometry.az.gov

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:

An oral proceeding regarding the proposed rules will be held as follows:

Date: Thursday, October 18, 2007
Time: 8:30 a.m.
Location: 1400 W. Washington St., Suite 230
Phoenix, AZ 85007

The rulemaking record will close at 5:00 p.m. on October 19, 2007.

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 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 21. BOARD OF OPTOMETRY

ARTICLE 1. GENERAL PROVISIONS

Section

R4-21-101. Definitions

~~R4-21-102. Repealed~~

~~R4-21-103-R4-21-102. Fees and other Charges~~

~~R4-21-203-R4-21-103. Time-frames for Licensure, Renewal of License, Certificates of Special Qualification, and Course of Study Approval~~ Board Action

Table 1. Time-frames (in calendar days)

ARTICLE 2. LICENSING PROVISIONS

Section

R4-21-201. Licensure by Examination

~~R4-21-202. Licensure by Endorsement~~

~~R4-21-202-R4-21-203. License Jurisprudence Examination~~

~~R4-21-204. License Issuance~~

~~R4-21-204-R4-21-205. License Renewal~~

~~R4-21-206. License Reinstatement; Application for Licensure following License Expiration~~

~~R4-21-205-R4-21-207. Course of Study Approval~~

~~R4-21-206-R4-21-208. Use of Pharmaceutical Agents Certificate of Special Qualification; Pharmaceutical Agent Number~~

~~R4-21-208-R4-21-209. Continuing Education Requirements; Program Criteria and Procedures Requirement~~

~~R4-21-210. Repealed Approval of Continuing Education~~

~~R4-21-211. Repealed Audit of Compliance with Continuing Education Requirement~~

~~R4-21-212. Repealed~~

~~R4-21-209-R4-21-212. Discretionary Exemption Waiver of or Extension of Time to Complete Continuing Education Requirement~~

~~R4-21-213. Registration of Nonresident Contact-lens Dispenser; Renewal~~

ARTICLE 3. REGULATORY PROVISIONS STANDARDS; RECORDKEEPING; REHEARING OR REVIEW OF BOARD DECISION

Section

~~R4-21-301. Styles of Optometric Practice; Staff Responsibility~~ Repealed

~~R4-21-207-R4-21-301. Issuance and Display of License; Surrender of License~~

R4-21-302. Advertising

R4-21-303. Affirmative Disclosures in Advertising and Practice; Warranties, Service, or Ophthalmic Goods Replacement Agreements Required

~~R4-21-304. Vision Examination Standards~~

~~R4-21-304-R4-21-305. Vision Examination Standards; Records~~ Recordkeeping

~~R4-21-305-R4-21-306. Optometric Prescription Standards; Release to Patients~~

~~R4-21-307. Repealed~~

~~R4-21-306-R4-21-307. Low-vision Rehabilitation and Vision Therapy~~

~~R4-21-308. Anaphylactic-related Supplies~~

~~R4-21-308-R4-21-309. Rehearing or Review of Administrative~~ Board Decision

ARTICLE 5. EXECUTIVE DIRECTOR DUTIES REPEALED

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Section	
R4-21-501.	Issuing Licenses Repealed
R4-21-502.	Denial of License Repealed
R4-21-503.	Issuing Subpoenas Repealed
R4-21-504.	Continuing Education Approval Repealed

ARTICLE 1. GENERAL PROVISIONS

R4-21-101. Definitions

In addition to the definitions established in A.R.S. §§ 32-1701 and 32-1771, the following terms apply to this Chapter:

“Accredited” means approved by the ACOE.

- 1- “ACOE” means the Accreditation Council on Optometric Education.

“Advertisement” means a written, oral, or electronic communication that an ordinary person would perceive is designed to influence, directly or indirectly, a decision regarding ophthalmic goods or optometric services.

- 2- “Applicant” means:

An individual who applies to the Board under A.R.S. § 32-1722 or 32-1723 for a license to practice the profession of optometry in this state under A.R.S. §§ 32-1722 and 32-1723, but has not yet been granted the license;

A licensee who applies under R4-21-205 for license renewal;

A licensee who applies under R4-21-208 for a pharmaceutical agents number;

A licensee or provider of continuing education that applies for approval of a continuing education under R4-21-210; or

A person who applies to the Board under A.R.S. § 32-1774 and R4-21-213 for registration as a non-resident dispenser of replacement soft contact lenses.

“Application package” means the forms, documents, and fees that the Board requires an applicant to submit or have submitted on the applicant’s behalf.

“Approved continuing education” means a planned educational experience relevant to the practice of the profession of optometry that the Board determines meets the criteria at R4-21-210.

- 3- “Certificate of special qualification” means a document that specifies that whether the holder, who was licensed by the Board before July 1, 2000, and has not completed a course of study approved by the Board, may prescribe, administer, and dispense one or more of a pharmaceutical agent categories identified in A.R.S. § 32-1728(B)(1), (2), or (3) or may practice optometry without the use of pharmaceutical agents and if so, whether the holder may prescribe, administer, and dispense:

A topical diagnostic pharmaceutical agent only, or

Topical diagnostic and topical therapeutic pharmaceutical agents.

- 4- “Correspondence course” means continuing education delivered by video, audio, electronic or digital means, scientific journals or periodicals, or any other media as approved by the Board.

“Course of study,” as used in A.R.S. § 32-1722, means education approved by the Board under R4-21-207 that qualifies an optometrist to prescribe, administer, and dispense topical diagnostic, topical therapeutic, and oral pharmaceutical agents.

“Epinephrine auto-injector” means an intramuscular dose of epinephrine used for emergency treatment of an allergic reaction and delivered by a spring-loaded, easy-to-use, syringe.

“Good cause” means a reason that the Board determines is substantial enough to afford a legal excuse.

- 5- “Incompetence,” as used in A.R.S. § 32-1701(8), means lack of professional skill, fidelity, or physical or mental fitness, or substandard examination or treatment while practicing the profession of optometry.

“Low vision” means bilateral impairment to vision that significantly interferes with daily routine activities and cannot be adequately corrected with medical, surgical, or therapeutic means or conventional eyewear or contact lenses.

“Low-vision rehabilitation” means use of optical and non-optical devices, adaptive techniques, and community resources to assist a patient to compensate for low vision in performing daily routine activities.

- 6- “Negligence,” as used in A.R.S. § 32-1701(8), means conduct that falls below the standard of care for the protection of patients and the public against unreasonable risk of harm and that is a departure from the conduct expected of a reasonably prudent licensee under the circumstances.

- 7- “Low vision rehabilitation” means evaluation, diagnosis, management, and treatment of a limited vision, including the prescribing of corrective spectacles, contact lenses, prisms, or filters; or the employment of any means for the adaptation of lenses.

- 8- “Pharmaceutical” or “pharmaceutical agent” means a prescription or nonprescription substance, or a schedule III controlled substance used for examination, diagnosis or treatment of conditions of the human eye and its adnexa.

A.R.S. § 32-1701(5). Pharmaceutical and pharmaceutical agents include the following categories:

- a. ~~“Topical diagnostic agents” means externally applied medicine used to diagnose disease and conditions of the eye and its adnexa;~~
- b. ~~“Topical diagnostic and therapeutic pharmaceutical agent” means externally applied medicines used to diagnose, treat, and manage disease of the eye and its adnexa;~~
- e. ~~“Oral pharmaceutical” means an ingested medication used to diagnose, treat, and manage disease of the eye and its adnexa; and~~
- d. ~~“Anti-anaphylactic agent” means an intramuscular dose of epinephrine used for the emergency treatment of allergic reactions and delivered by a self-injecting syringe.~~

“Oral pharmaceutical agent,” as used in A.R.S. § 32-1728, means an ingested medicine used to diagnose, treat, or manage disease of the eye and its adnexa.

“Party” has the same meaning as prescribed in A.R.S. § 41-1001.

“Plano lenses” means contact lenses that have cosmetic rather than corrective function.

9. “Practice management” means the study of management of the affairs of optometric practice.

“Self-instructed media” means educational material in a printed, audio, video, or electronic format.

“Topical diagnostic pharmaceutical agent,” as used in A.R.S. § 32-1728, means an externally applied medicine used to diagnose disease and conditions of the eye and its adnexa.

“Topical therapeutic pharmaceutical agent,” as used in A.R.S. § 32-1728, means an externally applied medicine used to treat or manage disease of the eye and its adnexa.

“Vision rehabilitation” means an individual plan of clinical therapy and instruction in compensatory approaches.

10. “Vision therapy” means an individualized course of treatment and education prescribed to improve conditions of the human eye or adnexa. Vision therapy is designed to help individuals learn, relearn, or reinforce specific vision skills, including eye movement control, focusing control, eye coordination, and the teamwork of the two eyes. Vision therapy includes, but is not limited to: optical, non-optical, electronic, or other treatments.

11. ~~“Vision rehabilitation” means development of an individual plan specifying clinical therapy and instruction in compensatory approaches.~~

~~R4-21-102. Repealed~~

~~R4-21-103-R4-21-102. Fees and Other Charges~~

~~A. In addition to The Board shall collect the fees established by A.R.S. § 32-1727;~~

~~B. Under the authority provided at A.R.S. § 32-1727, the Board establishes and shall charge collect the following license fees as follows:~~

- 1. ~~License issuance fee of \$400, that which is prorated from date of issuance to date of renewal;~~
- 2. ~~Biennial license renewal fee of \$400 that is prorated to the licensee’s renewal date if less than biennial renewal period; and~~
- 3. ~~Late renewal fee of \$200.~~

~~C. Under the authority provided at A.R.S. § 32-1773(B), the Board establishes and shall collect a fee of \$500 for registration or biennial registration renewal as a nonresident dispenser of contact lenses.~~

~~B-D. A Except as provided in subsection (D)(3), a person requesting a public records record shall pay the following fees for searches and copies of Board records under A.R.S. §§ 39-121.01 or 39-121.03:~~

- 1. ~~Noncommercial copy:
 - a. ~~5¢ per name and address for directory listings or 15¢ each if printed on labels, and~~
 - b. ~~25¢ per page for other records;~~~~
- 2. ~~Commercial copy:
 - a. ~~25¢ per name and address for directory listings or 35¢ each if printed on labels, and~~
 - b. ~~50¢ per page for other records; and~~~~
- 3. ~~The Board shall waive fees waives the charges listed in subsections (D)(1) and (D)(2) for other a government agencies agency.~~
- 4. ~~Pamphlets containing optometry statutes and rules: \$5.~~

~~E. The Board establishes and shall collect the following charges for the services specified:~~

- ~~5-1. Written or certified license verifications verification: \$10; and~~
- ~~6-2. Duplicate or replacement renewal receipts receipt: \$10.~~

~~C. An applicant for registration or biennial registration renewal as a nonresident contact lens dispenser shall pay to the Board a registration fee of \$500.~~

~~R4-21-203-R4-21-103.~~ Time-frames for ~~Licensure, Renewal of License, Certificates of Special Qualification, and Course of Study Approval Board Action~~

- A. For each type of license, certificate, or approval, ~~or renewal~~ issued by the Board, the overall time-frame described in A.R.S. § 41-1072(2) is listed in Table 1.
- B. For each type of license, certificate, or approval, ~~or renewal~~ issued by the Board, the administrative completeness review time-frame described in A.R.S. § 41-1072(1) is listed in Table 1 and begins on the date the Board receives an application package.
1. If ~~the~~ an application package is not administratively complete, the Board shall send a deficiency notice to the applicant:
 - a. ~~The deficiency notice shall state that specifies~~ each deficiency and the piece of information or document needed to complete the application ~~and documents package~~.
 - b. ~~The deficiency notice shall require the applicant to respond to the deficiencies within~~ Within the time provided in Table 1 for response to a deficiency notice, beginning on the mailing postmark date of the deficiency notice, the applicant shall submit to the Board the missing information or document specified in the deficiency notice.
 2. The time-frame for the Board to finish the administrative completeness review is suspended from the date the Board mails the deficiency notice to the applicant until the date the Board receives the missing information or document.
 - ~~3-2.~~ If ~~the~~ an application package is administratively complete, the Board shall send a written notice of administrative completeness to the applicant.
 - ~~4-3.~~ If ~~the applicant fails to respond timely and completely to an application package is not completed with the time provided to respond to the deficiency notice~~, the Board shall send a written notice to the applicant informing the applicant that the Board considers the application withdrawn.
 - ~~5.~~ ~~An applicant may request an extension of the time to satisfy the deficiency notice.~~
- C. For each type of license, certificate, or approval, ~~or renewal~~ issued by the Board, the substantive review time-frame described in A.R.S. § 41-1072(3) is listed in Table 1 and begins on the date ~~of receipt of the Board sends written~~ the notice of administrative completeness to the applicant.
1. During the substantive review time-frame, the Board may make one comprehensive written request for additional information. ~~The~~ Within the time provided in Table 1 for response to a comprehensive written request for additional information, beginning on the postmark date of the comprehensive written request for additional information, the applicant shall submit to the Board the requested additional information within the time provided in Table 1. The time-frame for the Board to finish the substantive review is suspended from the date the Board mails the comprehensive written request for additional information to the applicant until the Board receives the additional information.
 2. If, under A.R.S. § 32-1722(C), the Board determines that a hearing is needed to obtain information on the character of an applicant, the Board shall include a notice of the hearing in its comprehensive written request for additional information.
 3. ~~The Board shall issue a written notice of denial of a license, renewal, certificate, or approval if the Board determines that the applicant does not meet all of the substantive criteria required by statute or this Chapter. If the applicant fails to provide the additional information within the time provided for respond to a comprehensive written request for additional information, the Board shall send a written notice to the applicant informing the applicant that the Board considers the application withdrawn.~~
 4. ~~If the applicant meets all of the substantive criteria required by statute and this Chapter for licensure, renewal, certificate, or approval, the Board shall notify the applicant that the qualifications for licensure have been met and the license shall be issued as specified in R4 21 207 after receipt of the license issuance fee.~~
- D.** An applicant may receive a 40-day extension of the time to respond under subsection (B)(3) or (C)(3) by sending a notice of extension of time to the Board before expiration of the time to respond. The time-frame for the Board to act remains suspended during any extension of time. If the applicant fails to respond during the extension of time, the Board shall send a written notice to the applicant informing the applicant that the Board considers the application withdrawn.
- E.** Within the overall time-frame listed in the Table 1, the Board shall:
1. Deny a license, certificate, or approval to an applicant if the Board determines that the applicant does not meet all of the substantive criteria required by statute and this Chapter; or
 2. Grant a license, certificate, or approval to an applicant if the Board determines that the applicant meets all of the substantive criteria required by statute and this Chapter.
- F.** If the Board denies a license, certificate, or approval under subsection (E)(1), the Board shall provide a written notice of denial to the applicant that explains:
1. The reason for the denial, with citations to supporting statutes or rules;
 2. The applicant's right to seek a fair hearing to appeal the denial;
 3. The time for appealing the denial; and
 4. The right to request an informal settlement conference.
- D-G.** A In computing any period of time as prescribed in this Section, ~~does not include~~ the day of the ~~initial~~ act, event, or default after which the designated period begins to run is not included. The ~~time~~ period begins on the date of personal ser-

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vice, receipt, or the date shown as received on a certified mail receipt, or postmark date. The last day of the time-frame period is included unless it falls on a Saturday, Sunday, or state holiday in which case, the time period ends on the next business day.

Table 1. Time-frames (in calendar days)

Type of License	Overall Time-frame	Administrative Review Time-frame	Time to Respond to Deficiency Notice	Substantive Review Time-frame	Time to Respond to Request for Additional Information
Initial Licensure by Examination examination A.R.S. § 32-1722; R4-21-201	90 75	30 15	20 60	60	20
Initial Licensure by endorsement A.R.S. § 32-1723; R4-21-204 202	120 75	60 15	20 75	60	20
Renewal of License license A.R.S. § 32-1726; R4-21-204 205	90 45	60 15	20	30	20
Board Approved Course of Study R4-21-205	180	90	20	90	20
Certificates of Special Qualification Pharmaceutical agents number A.R.S. § 32-1728; R4-21-206 208	120 75	60 15	20 60	60	20
Continuing Education Program Approval of a continuing education A.R.S. § 32-1704(D); R4-21-208 210	120 75	60 15	20	60	20
Registration of nonresident dispenser of replacement soft contact lenses A.R.S. § 32-1773; R4-21-213	120 75	60 15	20	60	20

ARTICLE 2. LICENSING PROVISIONS

R4-21-201. Licensure by Examination

A. An individual is eligible to apply for licensure by examination if the individual:

1. Graduated from an accredited optometry program; and
2. Has never been licensed to practice the profession of optometry or has been licensed by another state for fewer than four years.

A.B. ~~A person applying for licensure~~ To apply for licensure by examination, an individual who is eligible under subsection (A) shall submit the following information on a licensure an application form, provided by which is available from the Board, not later than 30 days before the date of the Board-designated jurisprudence exam and provide the following information about the applicant:

1. The applicant's full Full legal name and social security number;
2. Other names ever used, if any, and a copy of the court document or marriage license resulting in a name change;
3. Social Security number;
2. The applicant's place and date of birth;
- 3-4. The applicant's current mailing Mailing address;
5. E-mail address, if any;
6. Residential, business, and mobile telephone numbers;
7. Date and place of birth;
- 4-8. The applicant's residence Residential addresses for the past five years;
- 5-9. The applicant's educational Educational background including the name and address of, dates of attendance at, and date of graduation from;

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- a. An accredited optometry program.
 - b. A pre-optometric school or undergraduate educational institution.
 - c. High school, and
 - d. Other schools attended;
 - 6-10. ~~The applicant's previous optometric experience~~ Experience in the practice of the profession of optometry including the business form and location of the practice;
 - 7-11. ~~The applicant's work~~ Work experience or occupation, other than the practice of the profession of optometry, for the past five years;
 8. ~~A list of the applicant's previous state board examinations;~~
 - 9-12. ~~A list~~ List of the states in which the applicant is ~~or has been~~ professionally licensed ~~and, if a license is no longer valid, the reasons why~~ including the name of the state, type of professional license, date issued, and expiration date;
 13. List of the states in which the applicant was but no longer is professionally licensed including the name of the state, type of professional license, date issued, and reason the license is no longer valid;
 14. Statement of whether the applicant:
 - 10- ~~Whether the applicant has~~
 - a. Has ever been denied the right to take an examination for optometric licensure by any state or jurisdiction and if so, the name of the state or jurisdiction, date, and reason for the denial;
 - 11- ~~Whether the applicant has~~
 - b. Has ever been ~~refused~~ denied an optometric license or renewal in any state or jurisdiction and if so, the name of the state or jurisdiction, date, and reason for the denial;
 - 12- ~~Whether the applicant has~~
 - c. Has ever had a license or certificate of registration to practice the profession of optometry suspended or revoked by any optometric licensing agency, ~~board, or equivalent~~ and if so, the name of the optometric licensing agency, date, reason for the suspension or revocation, and current status;
 - d. Has ever had an investigation conducted or has an investigation pending by an optometric regulatory agency of any state or jurisdiction and if so, name of the optometric regulatory agency and state or jurisdiction, date, reason for the investigation, and current status;
 - 13- ~~Whether any disciplinary action has~~
 - e. Has ever ~~been~~ had a disciplinary action instituted against the applicant by any optometric licensing agency ~~or equivalent~~ and if so, the name of the optometric licensing agency, date, nature of the disciplinary action, reason for the disciplinary action, and current status;
 - 14- ~~Whether the applicant has~~
 - f. Has ever been convicted of, pled guilty or no contest to, or entered into diversion in lieu of prosecution for any criminal offense in any jurisdiction of the United States or foreign country and if so, name of the jurisdiction, nature of the offense, date, and current status;
 - 15- ~~Whether the applicant has~~
 - g. Has been addicted to narcotic substances or habitually abused alcohol within the last 10 years and if so, date, steps taken to address the addiction or abuse, and current status; and
 - 16- ~~Whether the applicant is~~
 - h. Is presently addicted to narcotic substances or habitually abuses alcohol and if so, why the addiction or abuse does not amount to unprofessional conduct; and
 17. ~~The applicant shall submit a complete explanation of the details if the answer to any of the questions in subsections (A)(12) through (A)(16) is affirmative;~~
 - 18-15. ~~A statement sworn under oath by the applicant~~ Dated and sworn signature of the applicant verifying the truthfulness of that the information provided is true to the best of the applicant's knowledge, information, and belief; and
 19. ~~A two inch by three inch passport style photograph of the applicant taken within the past six months.~~
- ~~B.C.~~ In addition to the requirements of submitting the application form required under subsection (A) (B), an applicant for licensure shall submit or have submitted on the applicant's behalf:
1. A two inch by three inch passport-quality photograph of the applicant's head and shoulders, which is taken within six months of the date of application and signed by the applicant in ink across the lower portion of the front side;
 - 1-2. A completed Arizona Department of Public Safety fingerprint card accompanied by a full set of readable fingerprints taken by a criminal justice agency; separate nonrefundable fee in the form of
 3. a A cashier's check, ~~certified check,~~ or money order ~~in an amount determined by and~~ payable to the Arizona Department of Public Safety in the amount required to obtain a state and federal criminal records check;
 - 2-4. The application fees ~~fee~~ required pursuant to ~~under~~ A.R.S. § 32-1727;
 - 3- ~~Evidence of the successful completion of an approved course of study under A.R.S. § 32-1722(A)(3). Acceptable evidence includes:~~
 - a. ~~An official transcript showing that the applicant has passed the required optometry courses; or~~
 - b. ~~A certificate of completion issued by the sponsoring institution specifying the subject matter and hours com-~~

pleted; and

5. A copy of the scores obtained by the applicant on Parts I, II, and III of the National Board of Examiners in Optometry examination less than five years before the date of the application;
 6. A passing score obtained by the applicant on the jurisprudence examination described at R4-21-203;
 - 4.7. An official transcript received submitted directly from to the Board by the educational institution with an accredited optometry school program from which the applicant graduated with a degree in optometry;
 8. An official transcript submitted directly to the Board by the educational institution at which the applicant took pre-optometry or undergraduate courses;
 9. A self-query from the National Practitioner Data Bank-Healthcare Integrity and Protection Data Bank made within three months before the date of application; and
 10. A copy of the front and back of the cardiopulmonary resuscitation card issued to the applicant or other written documentation of current certification in cardiopulmonary resuscitation.
- C. An applicant for licensure by endorsement shall submit at least 30 days before the date of the Board designated jurisprudence exam:
1. A license verification from all states in which the endorsement applicant has practiced in the five years before the date of application that provides the following information:
 2. Current status of the license;
 3. Scope of practice; and
 4. Date of licensure, license number, whether any disciplinary action has been taken, complaints against the licensee on file, and any pending investigations.
- D. Review and approval of regular and endorsement applications. The Board may approve a regular or endorsement application based upon any combination of education or experience as specified in A.R.S. §§ 32-1722 and 1723.

R4-21-202. Licensure by Endorsement

- A. An individual is eligible to apply for licensure by endorsement if the individual:
1. Graduated from an accredited optometry program;
 2. Is licensed to practice the profession of optometry in another state that has licensing requirements that the Board determines meet or exceed Arizona's requirements;
 3. Has engaged in the practice of the profession of optometry continuously in the other state or military for at least four of the five years before the date of application; and
 4. Has not had a license to practice the profession of optometry suspended or revoked by any licensing jurisdiction for a cause that is a ground for suspension or revocation of a license in Arizona.
- B. To apply for licensure by endorsement, an individual who is eligible under subsection (A) shall submit the application form described in R4-21-201(B).
- C. In addition to complying with subsection (B), an applicant for licensure by endorsement shall submit or have submitted on the applicant's behalf:
1. The materials required under R4-21-201(C)(1) through (C)(4) and (C)(6) through (C)(10);
 2. A state board certification and license verification form, which is submitted directly to the Board from the state that issued the license on which the applicant's endorsement application is based, indicating:
 - a. Name and title of the individual completing the verification form;
 - b. Number of the applicant's optometry license in the state;
 - c. Date on which the applicant was issued an optometry license by the state;
 - d. A statement of whether the applicant:
 - i. Has been licensed in the state for at least four of the last five years;
 - ii. Is certified to use topical diagnostic, topical therapeutic, or oral pharmaceutical agents and if so, the date on which the certification was obtained;
 - iii. Is currently in good standing in the state;
 - iv. Is known to be licensed to practice the profession of optometry in another state and if so, the name of the other state;
 - v. Has been subject to any disciplinary action and if so, the date, nature of, and reason for the disciplinary action; and
 - vi. Is subject to any pending investigation or complaint and if so, the nature of the investigation or complaint;
 - e. Whether the state is authorized to license an Arizona optometrist by reciprocity or endorsement if the Arizona optometrist has qualifications that meet or exceed those required of an optometrist in the state; and
 - f. The dated, notarized signature of the individual completing the verification form; and
 3. A letter on official letterhead, in substantially the form specified by the Board, from a representative of the accredited optometry program at the educational institution from which the applicant graduated, providing details that demonstrate the applicant's education meets the standards at R4-21-207.

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~~R4-21-202~~R4-21-203. License Jurisprudence Examination

- A.** ~~All applicants for licensure shall take a Jurisprudence exam. A passing~~ To be licensed, an applicant shall obtain a score on the examination is of at least 75% and above on a jurisprudence examination that assesses knowledge of Arizona's statutes and rules relating to optometry.
- B.** An applicant may take the jurisprudence examination at any time after submitting to the Board the application form required under R4-21-201(B) or R4-21-202(B).
- ~~B-C.~~** An applicant who fails the ~~Jurisprudence~~ jurisprudence examination may retake the examination one time within six months from the date of the original ~~exam~~ examination. ~~An~~
- D.** The Board shall further consider an applicant who fails the ~~Jurisprudence exam~~ jurisprudence examination a second time ~~shall wait at least six months to submit another application with required fees~~ only if the applicant:
1. Waits at least six months from the date of the second taking of the jurisprudence examination;
 2. Submits a new application form under R4-21-201(B) or R4-21-202(B);
 3. Submits a full set of readable fingerprints taken by a criminal justice agency and a cashier's check or money order payable to the Arizona Department of Public Safety in the amount required to obtain a state and federal criminal records check;
 4. Submits a two inch by three inch passport-quality photograph of the applicant's head and shoulders, which is taken within six months of the date of the new application and signed by the applicant in ink across the lower portion of the front side;
 5. Submits a self-query from the National Practitioner Data Bank-Healthcare Integrity and Protection Data Bank made within three months before the date of the new application; and
 6. Submits the application fee required under A.R.S. § 32-1727.

~~R4-21-204.~~ License Issuance

- A.** When the Board determines that an applicant meets all of the substantive criteria required by statute and this Chapter, the Board shall send the applicant a written notice informing the applicant that the Board shall issue the applicant a license when the applicant pays the license issuance fee required under R4-21-102(B).
- B.** Under A.R.S. § 32-1725, if an applicant fails to pay the license issuance fee within 60 days after receiving notice under subsection (A), the Board considers the application withdrawn. An individual whose application is withdrawn can be further considered for licensing only by complying with R4-21-201 or R4-21-202.

~~R4-21-204~~R4-21-205. License Renewal

- A.** To continue practicing the profession of optometry in Arizona, a licensee shall renew the licensee's license and certificate of special qualification, if applicable, on or before the date on which the license and certificate expire. Timely renewal is a licensee's responsibility. As a courtesy, the Board may provide a licensee with notice that the licensee's license is going to expire. Failure to obtain notice of the need to renew is not good cause for failing to renew.
- B.** To renew a license and, if applicable, certificate of special qualification, ~~an applicant~~ a licensee shall submit to the Board a license renewal application and provide the renewal fee under R4-21-103 and the following information to the Board:
1. Whether the licensee wants to renew the licensee's license and, if applicable, certificate of special qualification;
 - 1-2. Any change in the applicant's ~~The licensee's current mailing or residential~~ address and telephone and fax numbers;
 3. A list of continuing education courses and if requested, proof of attendance and course completion; pursuant to R4-21-208; ~~The licensee's current residential address, e-mail address, and residential and mobile telephone numbers;~~
 - 2-4. A list of all ~~The licensee's current~~ permanent and temporary practice addresses and ~~phone~~ telephone and fax numbers;
 5. A statement of whether the licensee:
 - a. Has practiced the profession of optometry within the last two years;
 - 4-b. Whether the applicant has ever ~~Has~~ been denied the right to take an examination for optometric licensure by any state or jurisdiction within the preceding two years and if so, the name of the state or jurisdiction, date, and reason for the denial;
 - 5-c. Whether the applicant has ever ~~Has~~ been refused ~~denied~~ an optometric license or renewal in any state or jurisdiction within the preceding two years and if so, the name of the state or jurisdiction, date, and reason for denial;
 - 6-d. Whether the applicant has ~~Has~~ had a license or certificate of registration to practice the profession of optometry suspended or revoked by any optometric ~~licensing~~ regulatory agency, board, or equivalent within the preceding two years and if so, the name of the optometric regulatory agency, date, action taken, reason for the action, and current status;
 - 7-e. Whether any ~~Has had~~ disciplinary action ~~has been~~ instituted against the ~~applicant~~ licensee by any optometric ~~licensing~~ regulatory agency or equivalent within the preceding two years and if so, the name of the optometric regulatory agency, date, nature of the disciplinary action, reason for the disciplinary action, and current status;
 - f. Has had an investigation conducted within the preceding two years or has an investigation pending by an optometric regulatory agency of any state or jurisdiction and if so, name of the optometric regulatory agency and the

state or jurisdiction, date, reason for the investigation, and current status;

~~8.g. Whether the applicant has~~ Has been convicted of, pled guilty or no contest to, or entered into diversion in lieu of prosecution for any criminal offense in any jurisdiction of the United States or foreign country within the preceding two years, and if so, ~~an explanation~~ the name of the jurisdiction, date, offense charged and, if applicable, convicted, and current status;

~~9.h. Whether the applicant has~~ Has been addicted to narcotic substances or habitually abused alcohol within the preceding two years and if so date, steps taken to address the addiction or abuse, and current status;

~~10.i. Whether the applicant is~~ Is presently addicted to narcotic substances or habitually abuses alcohol and if so, why the addiction or abuse does not amount to unprofessional conduct;

~~11. Whether the applicant has been sued for malpractice within the preceding two years;~~

~~12.j. Whether the applicant has~~ Has had the authority to prescribe, dispense, or administer ~~medication~~ pharmaceutical agents limited, restricted, modified, denied, surrendered, or revoked by a federal or state agency within the preceding two years and if so, name of agency taking action, nature of action taken, date, reason for action, and current status; and

k. Is in compliance with the provisions of A.R.S. § 32-3211;

~~13.6. A complete explanation of the details if the answer to any of the questions in subsections (A)(4) through (A)(12) is affirmative;~~ The following information about each approved continuing education attended by the licensee during the preceding two years:

a. Name of continuing education provider,

b. Title,

c. Date of attendance, and

d. Number of hours of attendance; and

~~14.7. A statement verifying the truthfulness of~~ The licensee's dated signature affirming that the information provided is true and correct.

C. In addition to the license renewal application required under subsection (B), a licensee shall submit to the Board:

1. The license renewal fee listed at R4-21-102(B); and

2. The certificate of special qualification fee required under A.R.S. § 32-1727 if the licensee has a certificate of special qualification; or

3. Written documentation that the licensee is currently certified in cardiopulmonary resuscitation if the licensee has a pharmaceutical agents number.

D. A licensee who fails to renew the licensee's license and, if applicable, certificate of special qualification within 30 days after the date of expiration, may apply for late renewal by complying with subsections (B) and (C) within four months after the date of expiration and paying the late renewal fee listed at R4-21-102(B).

E. A licensee who fails to renew timely and fails to comply with subsection (D) shall not engage in the practice of the profession of optometry. The holder of a license that is not renewed within four months after the date of expiration may apply under R4-21-206 for license reinstatement but is not eligible for license renewal.

B.F. All certificates held by an applicant remain in effect upon license renewal. If a licensee timely applies for license renewal, the licensee's license and, if applicable, certificate of special qualification remain in effect until the license renewal is granted or denied.

C. A license is void if an applicant does not submit a completed renewal application and renewal fee under R4-21-103 within four months from the date of expiration.

R4-21-206. License Reinstatement; Application for Licensure following License Expiration

A. Reinstatement following license expiration. If an individual holds a license that has been expired at least four months but less than five years, the individual may apply to the Board to have the license and, if applicable, certificate of special qualification reinstated. To have an expired license reinstated, the former licensee shall:

1. Submit the renewal form described in R4-21-205(B);

2. Submit the renewal fee listed in R4-21-102(B) for each biennial period that the license was not renewed;

3. Submit, if applicable, the fee for a certificate of special qualification listed at A.R.S. § 32-1727 for each biennial period that the license was not renewed;

4. Submit the late renewal fee listed in R4-21-102(B) for each biennial period that the license was not renewed;

5. Submit a \$50 penalty fee for each year or portion of a year that the license was not renewed; and

6. Submit written documentation that the former licensee is currently certified in cardiopulmonary resuscitation if the former licensee had a pharmaceutical agents number.

B. Reinstatement following license suspension. If an individual holds a license that was suspended by the Board following a disciplinary proceeding and if the individual timely renewed the suspended license under R4-21-205, the individual may apply to the Board to have the license and, if applicable, certificate of special qualification reinstated. To have a suspended license reinstated, the suspended licensee shall:

1. Submit evidence of completing all terms of suspension imposed by the Board; and

2. Submit substantial evidence of complete rehabilitation with respect to the conduct that was the basis of the suspension.

C. Application for new license following license expiration. If an individual holds a license that has been expired for five years or more, the individual may apply for a new license:

1. Under R4-21-202 if the individual has continuously practiced the profession of optometry in another state or the military for at least four of the last five years, or
2. Under R4-21-201 if the individual is not qualified to apply for a new license under subsection (C)(1).

~~R4-21-205, R4-21-207.~~ Course of Study Approval

~~A.~~ Any educational institution may apply to the Board for approval of a course of study covering didactic education, pharmacology, and clinical training in the examination, diagnosis, and treatment of conditions of the human eye and its adnexa, and prescribing, dispensing, and administering pharmaceutical agents. The institution's authorized representative shall provide the following information on the application:

1. The name and address of the educational institution;
2. Certification that the course of study is equivalent in scope and content to the curriculum currently offered to graduating students by the educational institution;
3. The names and qualifications of faculty and staff;
4. A course outline that includes:
 - a. Didactic pharmacology and clinical training in the diagnosis and treatment of:
 - i. Anterior segment disease;
 - ii. Posterior segment disease;
 - iii. Glaucoma; and
 - iv. Systemic diseases and emergencies with all pharmaceutical agents and the specific agents listed in A.R.S. § 32-1706(A), (B), (C), and (E).
 - b. A minimum of 12 hours of pharmacologic principles in the side effects, adverse reactions, drug interactions, and use of systemic antibiotics, analgesics, antipyretics, antihistamines, over-the-counter medications, and medications and procedures to counter the affect of adverse reactions.

~~B.~~ To be approved, an educational institution shall grant a certificate of completion or its equivalent for the course of study if a student obtains a score of at least 75% on a closed book, proctored, written examination. The examination shall cover prescribing, dispensing, and administering pharmaceutical agents, and be commensurate with courses of study taken by current doctoral candidates in colleges of optometry.

The Board approves a course of study that:

1. Includes didactic and clinical training in:
 - a. Examining, diagnosing, and treating conditions of the human eye and its adnexa; and
 - b. Prescribing, dispensing, and administering pharmaceutical agents;
2. Includes at least 120 hours of training, at least 12 of which address prescribing, dispensing, and administering oral pharmaceutical agents; and
3. Is provided by an educational institution with an accredited optometry program.

~~R4-21-206, R4-21-208.~~ Use of Pharmaceutical Agents Certificate of Special Qualification; Pharmaceutical Agent Number

~~A.~~ If a licensee does not currently hold any certificate of special qualification, the Board shall grant a licensee the authority to prescribe, administer, and dispense pharmaceutical agents pursuant to A.R.S. § 32-1706 if the licensee:

1. Takes and passes a course of study that meets the requirements of R4-21-205(A); and
2. Provides the Board with a copy of current CPR certification;

~~A.~~ The Board shall issue a certificate of special qualification that allows a licensee to prescribe, administer, and dispense topical diagnostic and therapeutic pharmaceutical agents or only topical diagnostic pharmaceutical agents if the licensee:

1. Was licensed by the Board before July 1, 2000;
2. Held a comparable certificate of special qualification issued by the Board before July 1, 2000; and
3. Pays the fee prescribed at A.R.S. § 32-1727.

~~B.~~ Licensees holding a license issued prior to The Board shall issue a certificate of special qualification that indicates a licensee shall not prescribe, administer, or dispense a pharmaceutical agent if the licensee:

1. Was licensed by the Board before July 1, 2000, and
2. Did not holding any hold a certificate of special qualification shall not prescribe any pharmaceutical agents pursuant to A.R.S. 32-1728. The Board shall issue a certificate of special qualification specifying use of no pharmaceutical agents to the licensee issued by the Board before July 1, 2000, and
3. Pays the fee prescribed at A.R.S. § 32-1727.

~~C.~~ A licensee who is denied certification of a special qualification by the Board may appeal the decision by filing an appeal with the Board within 30 days following receipt of the notice of denial or disapproval. The hearing shall be conducted

under A.R.S. Title 41, Chapter 6, Article 10: A licensee who holds a certificate of special qualification issued under subsection (A) or (B) may apply to the Board for a pharmaceutical agent number that indicates the licensee is authorized to prescribe, administer, or dispense topical diagnostic, topical therapeutic, and oral pharmaceutical agents. To apply for a pharmaceutical agent number, a licensee who holds a certificate of special qualification issued under subsection (A) or (B) shall:

1. Submit to the Board an application, using a form that is available from the Board, and provide the following information:
 - a. Name of licensee;
 - b. Social Security number;
 - c. Mailing address;
 - d. Telephone and fax numbers at the address listed under subsection (C)(1)(c);
 - e. License number;
 - f. Number of certificate of special qualification for diagnostic pharmaceutical agents, if any;
 - g. Number of certificate of special qualification for therapeutic pharmaceutical agents, if any;
 - h. Residential address;
 - i. Telephone and fax numbers at the address listed under subsection (C)(1)(h);
 - j. Name of the course of study approved under R4-21-207 that the licensee completed and date of completion; and
 - k. Applicant's dated signature affirming that the information provided is true and correct; and
 2. Have a representative of the educational institution at which the licensee completed the approved course of study submit to the Board evidence that the course of study is approved and the licensee completed all course requirements; and
 3. Submit written documentation that the licensee is currently certified in cardiopulmonary resuscitation.
- D.** The Board shall issue a pharmaceutical agent number that indicates a licensee is authorized to prescribe, administer, or dispense topical diagnostic, topical therapeutic, and oral pharmaceutical agents if the licensee is initially licensed by the Board under R4-21-201 or R4-21-202 after June 30, 2000.

R4-21-208, R4-21-209. Continuing Education Requirements; Program Criteria and Procedures Requirement

- A.** A licensee shall complete 32 hours of approved continuing education per during each biennial license renewal period as follows. The licensee shall ensure that in each biennial license renewal period:
1. The licensee shall have at At least four hours of the approved continuing education is in the area of diagnosis, treatment, and management of disease of the human eye and its adnexa and pharmaceutical use appropriate to the authority held by the licensee;
 2. The licensee shall not claim No more than 12 hours by correspondence courses identified as of the approved continuing education are obtained through self-instructed continuing education media;
 3. The licensee shall not claim No more than four hours of the approved continuing education are in the area of practice management;
 4. The licensee may claim No more than one credit hour of approved continuing education is claimed for each day of instruction in a full-time program course of study approved under R4-21-205, or for less than a full-time program on a pro-rata basis. R4-21-207 to a maximum of four hours; and
 5. No more than four hours of approved continuing education are claimed for publishing or presenting a paper, report, or book that deals with current developments, skills, procedures, or treatments related to the practice of the profession of optometry.
- 5-B.** The If a licensee shall not carry over hours accumulated obtains more than 32 hours of approved continuing education during a biennial renewal period, the licensee shall not claim the extra hours of approved continuing education during a subsequent from any previous biennial renewal period.
- C.** During the biennial renewal period in which a licensee is first licensed, the licensee shall obtain a prorated number of hours of approved continuing education for each month remaining in the biennial renewal period.
- 6-D.** A licensee shall not use courses claim as approved continuing education any educational program or course taken before graduation from an accredited optometry school as credit for continuing education requirements completed before being licensed.
- 7-E.** A licensee who is licensed for the first time in the state shall obtain continuing education hours on a pro-rata basis. A licensee shall obtain a certificate or other evidence of attendance from the provider of each approved continuing education attended that includes the following:
1. Name of the licensee.
 2. License number of the licensee.
 3. Name of the approved continuing education.
 4. Name of the continuing education provider.
 5. Date, time, and location of the approved continuing education, and
 6. Number of hours of approved continuing education and number of hours relating to practice management.

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- E. A licensee shall maintain the certificates or other evidence of attendance described in subsection (E) for three years from the date of attendance.
- G. A licensee shall submit to the Board a copy of the certificates or other evidence of attendance obtained during a biennial renewal period if subject to an audit by the Board under R4-21-211.
- B. The Board shall grant a licensee continuing education credit for the following:
 - 1. Participating in an internship, residency, or fellowship at a teaching institution approved by the Association of Schools and Colleges of Optometry, Accreditation Council on Optometric Education, National Board of Examiners in Optometry, or the American Optometric Association;
 - 2. Participating in a medical education program designed to provide understanding of current developments, skills, procedures, or treatments related to the practice of optometry that is provided by an organization or institution accredited by the Association of Schools and Colleges of Optometry or the Accreditation Council on Optometric Education or approved by the Council on Optometric Practitioner Education, or a national, regional or local Optometric association; and
 - 3. Publishing or presenting a paper, report, or book that deals with current developments, skills, procedures, or treatments related to the practice of Optometry. The licensee may receive one credit hour for each hour preparing, writing, and presenting materials to a maximum of four hours per renewal period.
- C. A licensee may apply to the Board for approval of continuing education, not otherwise authorized, by submitting to the Board an application including a description of the program content, instructors and their qualifications, sponsor of the program, if any, conditions of availability, and time and place offered.

R4-21-210. Repealed Approval of Continuing Education

- A. The Board approves the following as continuing education:
 - 1. An internship, residency, or fellowship attended at an educational institution with an accredited optometry program; and
 - 2. An educational program designed to provide understanding of current developments, procedures, or treatments, or improve skills related to the practice of the profession of optometry and:
 - a. Provided by an educational institution with an accredited optometry program; or
 - b. Sponsored or approved by the Association of Schools and Colleges of Optometry, Council on Optometric Practitioner Education, or a local, regional, or national optometric association.
- B. To obtain approval of a continuing education that is not approved under subsection (A), the provider of the continuing education or a licensee shall, before providing or participating in the continuing education:
 - 1. Submit an application for approval, using a form that is available from the Board, and provide the following information:
 - a. Name of applicant.
 - b. Address and telephone number of applicant.
 - c. Provider of the continuing education.
 - d. Name and telephone number of a contact person with the continuing education provider.
 - e. Name of the continuing education.
 - f. Date and location of the continuing education.
 - g. Manner in which potential participants will be notified that the continuing education is available.
 - h. Number of hours of the continuing education and the number of hours that relate to practice management.
 - i. Name of instructor of the continuing education, and
 - j. Dated signature of the applicant;
 - 2. Submit a curriculum vitae for the instructor of the continuing education; and
 - 3. Submit a syllabus of the continuing education that identifies learning objectives, teaching methods, and content.
- C. The provider of an approved continuing education shall provide each participant with a certificate or other evidence of attendance that meets the standards at R4-21-209(E).

R4-21-211. Repealed Audit of Compliance with Continuing Education Requirement

At the time of license renewal, the Board shall provide notice of an audit of continuing education records to a random sample of licensees. A licensee subject to a continuing education audit shall submit documentation that demonstrates compliance with the continuing education requirement at the same time the licensee submits the license renewal application form required under R4-21-205.

R4-21-212. Repealed

R4-21-209-R4-21-212. Discretionary Exemption Waiver of or Extension of Time to Complete Continuing Education Requirement

- A. The Board may reduce the number To obtain a waiver of some or all of the hours of approved continuing education required or grant an extension of time for completion of all or part of the continuing education requirement for during a

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~~particular biennial licensure renewal period, a licensee shall submit a written request of the licensee. The Board shall grant an extension to a licensee who has suffered a serious or disabling illness that prevented the licensee from complying with the requirements of R4-21-208 during the 12 months immediately before the license renewal date to the Board that:~~

- ~~1. Specifies the number of hours of approved continuing education that the licensee requests the Board to waive; and~~
- ~~2. Documents that the licensee suffered a serious or disabling illness or other good cause that prevented the licensee from complying with the continuing education requirement.~~
- B.** The Board shall grant a waiver within seven days after receiving the request if the Board determines that the licensee demonstrated good cause.
- C.** To obtain an extension of time to complete the continuing education requirement, a licensee shall submit to the Board a written request that includes the following:
 1. Ending date of the requested extension.
 2. Continuing education completed during the biennial renewal period and the documentation required under R4-21-209(E).
 3. Proof of registration for additional approved continuing education that is sufficient to enable the licensee to fulfill the continuing education requirement before the end of the requested extension, and
 4. Licensee's attestation that the continuing education obtained under the extension will be reported only to fulfill the current renewal requirement and will not be reported on a subsequent license renewal application.
- D.** The Board shall grant an extension of time within seven days after receiving a request for an extension of time if the request:
 1. Specifies an ending date no later than four months after the date of license expiration.
 2. Includes the required documentation and attestation, and
 3. Will facilitate the safe and professional practice of the profession of optometry in this state.

R4-21-213. Registration of Nonresident Contact-lens Dispenser; Renewal

- A.** To register with the Board as a nonresident dispenser of replacement soft contact lenses, a person shall maintain a valid license to conduct the business of a pharmacist or pharmacy in the state in which the person is domiciled.
- B.** To register with the Board, a nonresident contact-lens dispenser that is qualified under subsection (A) shall submit to the Board:
 1. An application, using a form that is available from the Board, which provides the following information:
 - a. Name of applicant;
 - b. Social Security number;
 - c. Date of applicant's birth;
 - d. Mailing address;
 - e. Telephone and fax numbers at the address listed under subsection (B)(1)(d);
 - f. State in which the applicant is licensed as a pharmacist or pharmacy;
 - g. Number of pharmacist or pharmacy license;
 - h. Whether license held is for a pharmacist or pharmacy;
 - i. Taxpayer identification number;
 - j. Primary business name;
 - k. Address of business location at which inventory and records are stored;
 - l. Telephone and fax numbers at the address listed under subsection (B)(1)(k);
 - m. Toll-free telephone number for use by Arizona customers; and
 - n. Applicant's dated signature affirming that the information provided is true and correct;
 2. The names of all corporate offices and of all general partners, if any;
 3. The fee listed at R4-21-102(C); and
 4. A certified copy of the license referenced in subsection (B)(1)(g).
- C.** Registration as a nonresident contact-lens dispenser is valid for two years from the date issued. To renew registration, a registered nonresident contact-lens dispenser shall comply with subsection (B) before the registration expires.

ARTICLE 3. REGULATORY PROVISIONS STANDARDS; RECORDKEEPING; REHEARING OR REVIEW OF BOARD DECISION

R4-21-301. Styles of Optometric Practice; Staff Responsibility Repealed

- A.** ~~A licensee shall practice the profession of optometry only as a sole practitioner, a partner with other licensees, an employee of a licensee, or an optometric professional corporation. In any of these styles of practice, a licensee may practice as an independent contractor and shall practice only under the name, which may include a trade name, under which the licensee is registered with the Board.~~
- B.** ~~A licensee practicing the profession of optometry as an independent contractor shall:~~
 - ~~1. Be solely responsible for patient examination, diagnosis, and treatment and the procedures used for scheduling and~~

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recordkeeping;

2. Conduct the practice of optometry free of any control by a person not licensed to practice the profession of optometry; and
3. Ensure that the licensee's staff complies with the requirements of this Chapter and A.R.S. Title 32, Chapter 16.

~~R4-21-207.~~R4-21-301. Issuance and Display of License; Surrender of License

- A. License display. A licensee shall conspicuously display the appropriate Board-issued certificate of limited qualification or ~~wall~~ license at each location at which the licensee practices the profession of optometry and in a manner that makes the license visible to the public.
- B. License surrender. ~~A Upon order by the Board,~~ a licensee shall surrender to the Board all licenses, certificates, and duplicates ~~upon disciplinary order of the Board~~ copies of the license and, if applicable, certificate of special qualification issued to the licensee.

R4-21-302. Advertising

- A. A licensee shall not knowingly make, publish, or use an advertisement, ~~printed, oral, or otherwise,~~ that contains any a false, fraudulent, deceptive, or misleading representations concerning ophthalmic goods or optometric services, or the manner of their sale or distribution ~~representation~~.
- B. A licensee shall only advertise as a specialist if the licensee has been certified by the American Academy of Optometry as a diplomate in that specialty or as a fellow in the College of Optometrists in Vision Development. A licensee may advertise that the licensee has a practice limited in some way; if the licensee does not use the term "specialist" or any derivative of ~~that~~ the term "specialist."
- C. A licensee shall have knowledge of and be professionally responsible for ~~ensure that the contents~~ content of any an advertisement or directory that includes the name and address of the licensee is accurate.
- D. Under A.R.S. § 32-1701, a violation of this Section is unprofessional conduct and may be grounds for disciplinary action.

~~R4-21-303. Affirmative Disclosures in Advertising and Practice; Warranties, Service, or Ophthalmic Goods Replacement Agreements Required~~

- A. ~~An~~ A licensee shall ensure that an advertisement for or by a the licensee offering optometric goods or services shall clearly ~~indicate~~ indicates within the advertisement:
 1. Whether spectacle lenses or contact lenses ~~advertised~~ are single vision, multi-focal, or other;
 2. Whether the price ~~advertised for spectacles~~ includes both the frame and lenses ~~for spectacles~~;
 3. Whether the price ~~advertised~~ includes an eye examination;
 4. Whether the price ~~advertised~~ for contact lenses includes all dispensing fees, follow-up care, ~~and~~ a contact lens accessory kit; and; if an accessory kit is included, the specific features of the kit;
 5. Whether restrictions are imposed upon delivery, if delivery time is advertised;
 6. The ~~applicable~~ refund policy if refunds are advertised; and
 7. ~~If applicable, a~~ statement that other restrictions apply ~~if there are other restrictions~~.
- B. A licensee shall inform a patient of all professional fees before providing treatment.
- C. A licensee who refers a patient to a facility in which the licensee or a member of the licensee's family has an ownership or employment interest shall advise the patient ~~of the interest~~ at the time of the referral.
- D. A licensee who charges a patient a fee for a warranty; or a service or ophthalmic-goods-replacement agreement, shall:
 1. ~~give~~ Give the patient a written copy of the warranty; or service or ophthalmic-goods-replacement agreement, ~~that~~;
 2. Ensure that the warranty or service or ophthalmic-goods-replacement agreement explains the coverage included and any limitations limitation;
 3. ~~The licensee shall document the transaction~~ Document compliance with subsection (D)(1) by making a written entry on the patient's ~~records~~ record; and
 4. ~~by placing~~ Place a copy of the warranty; or service or ophthalmic-goods-replacement agreement, signed by the patient, in the patient's ~~records~~ record.

R4-21-304. Vision Examination Standards

A licensee shall conduct an eye examination in accordance with the standards of care prevalent in the community and consistent with current industry practice.

~~R4-21-304.~~R4-21-305. Vision Examination Standards; Records Recordkeeping

- A. A licensee shall conduct all eye examinations in accordance with the current standards of care.
- B. A licensee shall ~~establish~~ create and maintain a complete and legible record of each examination including all findings. ~~The Board shall consider an illegible record to be an incomplete examination.~~ A licensee shall ensure that a patient record reflects the name of the person who makes each entry, is maintained for at least seven ~~six~~ years after the licensee's last contact with a the patient and includes:
 1. Patient's name and contact information;
 2. Date on which an entry is made in the patient's record;

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3. Name of person making the entry in the patient's record;
 - ~~1-4. Complete health ease history;~~
 - ~~2-5. Visual acuity of each eye: entering; and best corrected;~~
 - ~~3-6. Ocular health examination;~~
 - ~~4-7. Assessment of intraocular and extra-ocular muscle function;~~
 - ~~5-8. Objective or subjective refraction of the eyes;~~
 - ~~6-9. Diagnosis, treatment, and disposition;~~
 - ~~7-10. The type Type and dosage of each use of a pharmaceutical agent;~~
 - ~~8-11. Any final Final optometric prescription given, if any; and~~
 - ~~9-12. Any corrective Corrective procedure program prescribed, if any; and~~
 13. Signature of licensee providing diagnosis, treatment, and disposition.
- B.** A licensee may create and maintain any record required under A.R.S. Title 32, Chapter 16 or this Chapter in electronic format. A licensee may convert any record maintained under A.R.S. Title 32, Chapter 16 or this Chapter to electronic format. A licensee who converts a record to electronic format shall ensure that the record contains all the information required under A.R.S. Title 32, Chapter 16 and this Chapter.
- C.** A licensee who discontinues practice for any reason shall arrange for patient records a patient's record to be available to a the patient for seven six years from the date the licensee's practice is discontinued licensee discontinues practice. And Before discontinuing practice, a licensee shall notify the Board of the permanent location of at which patient records from that the practice before discontinuing practice will be maintained.
- D.** A licensee who acquires or succeeds to a practice or the patient records of another a licensee who has discontinued practice, either with or without succeeding to the practice of the other licensee, shall maintain the records or make arrangements for ensure that the records to be are available to a patient the patients for seven six years after the licensee from whom the records were acquired discontinued practice was discontinued.
- D.E.** A licensee shall, upon written request of a patient, transmit provide a tangible or electronic copy of the a patient's requested records record within five business days of the after receiving a written request, from the patient. The licensee shall provide the copy to any person designated by the patient. The licensee may charge a fee to cover clerical and mailing the costs of providing the copy. The licensee shall maintain a record of the transfer or transmittal providing the copy for seven six years from the date of the release of the records.
- E.F.** Any record required to be maintained by a licensee may be maintained in an electronic format if:
1. The electronic record accurately reflects the information contained in the written record as the record was first generated and in its final form as an electronic record or otherwise; and
 2. The electronic record remains accessible. Regardless of the form in which a licensee creates and maintains patient records, the licensee shall comply with all law regarding security, confidentiality, and release of the records.
- G.** Under A.R.S. § 32-1743, failure to comply with this Section is grounds for disciplinary action.
- ~~R4-21-305-R4-21-306. Optometric Prescription Standards; Release to Patients~~**
- A.** A When a licensee completes an eye examination and generates an optometric prescription, the licensee shall not charge a patient a fee in addition to the examination fee as a condition for release of provide the patient with a copy of the patient's optometric prescription without charging a fee other than the examination fee.
- B.** The A licensee shall ensure that an optometric prescription written by the licensee includes:
1. For ophthalmic lenses other than contact lenses:
 - a. Name of the patient;
 - a-b. The refractive Refractive power of the lenses;
 - b-c. The interpupillary Interpupillary distance;
 - e-d. The printed Printed name of the licensee, the location of the office address, telephone number, and the signature of the licensee; and
 - d-e. The date Date of the examination and the expiration date of the prescription;
 2. For contact lenses, including plano lenses:
 - a. Name of the patient;
 - a-b. For a patient who has not completed a trial period appropriate under the circumstances and desires to have a prescription, the information required for the patient to purchase the trial lenses at another optical establishment or location;
 - b-c. If For a patient who has completed a trial period appropriate under the circumstances for the lenses prescribed, all information necessary to accurately reproduce the contact lenses accurately;
 - e-d. The printed Printed name, practice office address, telephone number, faesimile number license number, and signature of the licensee; and
 - d-e. The name of the patient, date Date of the examination; and the issue and expiration date of the prescription; and
 - f. Information regarding the prescribed contact lenses:
 - i. the Refractive power;

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- ii. Base curve or other appropriate designation;
- iii. Diameter, if appropriate;
- iv. Tint, if applicable;
- v. ~~material, or~~ Material, manufacturer, or both, of the prescribed contact lens, the base curve or appropriate designation of the prescribed contact lens, the diameter, when appropriate, of the prescribed contact lens; and
- vi. ~~in~~ In the case of a private-label contact lens lenses, the name of the manufacturer, trade name, of the private label brand and, if applicable, trade name of equivalent brand name; and

- 3. For pharmaceutical agents:
 - ~~b-a.~~ Name and address of the patient;
 - ~~a-b.~~ Date the prescription is issued;
 - c. Name, strength, and quantity of the pharmaceutical agent prescribed;
 - d. Directions for use of the pharmaceutical agent prescribed;
 - e. Name and office address, and telephone number of the prescribing licensee;
 - f. The written signature of the prescribing licensee;
 - ~~g-f.~~ DEA number of the prescribing licensee; and
 - ~~h-g.~~ Two adjacent signature lines; with the following under the left of which are the printed words:
 - i. “Dispense as written;” under the left signature line, and under the right, the printed words “substitution
 - ii. “Substitution permissible;” under the right signature line; and
 - h. Original signature of the prescribing licensee on one of the signature lines; and
- 4. ~~A prescription may include any additional~~ Additional information that the licensee considers necessary.
- B. A licensee who dispenses or directs the dispensing of ophthalmic materials shall ensure that a prescription is filled accurately.
- C. A licensee shall be available to verify that a prescription written by the licensee but ~~dispensed~~ filled by another provider of ophthalmic goods is accurately filled. The licensee may charge a fee for ~~verification of~~ verifying the accuracy or quality of ophthalmic goods dispensed by another provider.

~~R4-21-307.~~ Repealed

~~R4-21-306.~~~~R4-21-307.~~ Low-vision Rehabilitation and Vision Therapy

- ~~A.~~ A licensee may employ use any objective or subjective ~~means or methods~~ method other than surgery; to diagnose or treat ~~with pharmaceutical agents~~ any visual, muscular, neurological, or anatomical anomaly of the eye.
- ~~B.~~ The A licensee may use any instrument or device to train the visual system or correct any abnormal condition of the eye, including low-vision rehabilitation and vision therapy.

~~R4-21-308.~~ Anaphylactic-related Supplies

- ~~A.~~ If a patient to whom a licensee administers a pharmaceutical agent experiences an anaphylactic reaction, the licensee may, as provided by A.R.S. § 32-1706(E), use an epinephrine auto-injector to counteract the anaphylactic reaction.
- ~~B.~~ A licensee who maintains epinephrine auto-injectors at the licensee’s practice location shall also maintain the following medically necessary supportive equipment and supplies:
 - 1. Diphenhydramine in injectable, capsule or tablet, and syrup forms;
 - 2. Syringes for injecting diphenhydramine;
 - 3. Wristwatch with a second hand;
 - 4. Sphygmomanometer with both adult and extra-large cuffs;
 - 5. Stethoscope;
 - 6. Adult-size pocket mask with one-way valve;
 - 7. Tongue depressors; and
 - 8. Telephone.

~~R4-21-308.~~~~R4-21-309.~~ Rehearing or Review of Administrative Board Decision

- ~~A.~~ The Board shall provide for a rehearing and review of its decisions under A.R.S. Title 41, Chapter 6, Article 10 and the rules established by the Office of Administrative Hearings.
- ~~B.~~ The Board may reconsider all or any of the issues decided for any of the reasons in subsection (A). Except as provided in subsection (H), a party is required to file a motion for rehearing or review of a decision of the Board to exhaust the party’s administrative remedies.
- ~~C.~~ The Board may on its own initiative, within 30 days, reconsider its decision. A party may amend a motion for rehearing or review at any time before the Board rules on the motion.
- ~~A.D.~~ Under A.R.S. Title 41, Chapter 6, Article 10, Uniform Administrative Appeals Procedures, the The Board may, upon written request, reconsider a decision grant a rehearing or review for any of the following causes reasons materially affect-

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ing the moving a party's rights:

1. Irregularity in the administrative proceedings of the Board, hearing officer, or prevailing party; or any order or abuse of discretion; that deprived the moving party of a fair hearing;
 2. Misconduct of the Board, hearing officer, or prevailing party its staff, or the administrative law judge;
 3. Accident or surprise that could not have been prevented by ordinary prudence;
 4. ~~Material~~ Newly discovered material evidence ~~newly discovered~~; that ~~could not~~, with reasonable diligence, ~~could not~~ have been discovered and produced at the ~~original~~ hearing;
 5. Excessive or insufficient penalties;
 6. Error in the admission or rejection of evidence or other errors of law occurring at the hearing or in the course of ~~an administrative hearing~~ the proceedings; or and
 7. The findings of fact or decision is not justified by the evidence or is contrary to law.
- E.** The Board may affirm or modify a decision or grant a rehearing or review to all or some of the parties on all or some of the issues for any of the reasons listed in subsection (D). An order modifying a decision or granting a rehearing or review shall specify with particularity the grounds for the order. If a rehearing or review is granted, the rehearing or review shall cover only the matters specified in the order.
- F.** Not later than 30 days after the date of a decision and after giving the parties notice and an opportunity to be heard, the Board may, on its own initiative, order a rehearing or review of its decision for any reason it might have granted a rehearing or review on motion of a party. The Board may grant a motion for rehearing or review, timely served, for a reason not stated in the motion. An order granting a rehearing or review shall specify with particularity the grounds on which the rehearing or review is granted.
- G.** When a motion for rehearing is based upon affidavits, they shall be served with the motion. An opposing party may, within 15 days after service, serve opposing affidavits. This period may be extended by the Board for a maximum of 20 days for good cause or by written stipulation of the parties. Reply affidavits may be permitted.
- D.H.** If, in a particular decision, the Board makes a specific finding in a decision that the immediate effectiveness of the decision is necessary for the preservation of the public peace, health, or safety and that a rehearing or review of the decision is impracticable, unnecessary, or contrary to the public interest, the Board may issue the decision as a final decision without opportunity for a rehearing or review.
- E.** The terms "contested case and party" have the same meaning as in A.R.S. Title 41, Chapter 6.

ARTICLE 5. EXECUTIVE DIRECTOR DUTIES REPEALED

R4-21-501. Issuing Licenses Repealed

- A.** ~~The executive director or the Board's designee may decide whether to approve an application to practice the profession of optometry and shall issue a license if all of the requirements for licensure have been met as evidenced by the application and governing statutes.~~
- B.** ~~The executive director or the Board's designee shall report to the Board at each regularly scheduled Board meeting a summary of the number and type of applications approved and licenses issued.~~

R4-21-502. Denial of License Repealed

- A.** ~~The executive director or the Board's designee shall deny a license to an applicant who does not meet the minimum requirements to practice the profession of optometry in Arizona.~~
- B.** ~~The executive director or the Board's designee shall provide to the Board at each regularly scheduled Board meeting a list of applicants who were denied a license.~~

R4-21-503. Issuing Subpoenas Repealed

- A.** ~~The executive director or the Board's designee may issue a subpoena for the attendance of witnesses and the production of books, records, documents or any other evidence relevant to an investigation or hearing.~~
- B.** ~~The executive director or the Board's designee shall report to the Board at each regularly scheduled Board meeting a summary of the number and type of subpoenas issued.~~

R4-21-504. Continuing Education Approval Repealed

- A.** ~~The executive director or the Board's designee may approve continuing education programs under R4-21-208.~~
- B.** ~~The executive director or the Board's designee shall provide to the Board at each regularly scheduled Board meeting a list of approved continuing education programs.~~

NOTICE OF PROPOSED RULEMAKING

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 2. DEPARTMENT OF ENVIRONMENTAL QUALITY
AIR POLLUTION CONTROL

[R07-311]

PREAMBLE

- 1. Sections Affected**

R18-2-326	<u>Rulemaking Action</u>
R18-2-511	Amend
	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. § 49-425
Implementing statutes: A.R.S. §§ 49-426 and 49-455
- 3. A list of all previous notices appearing in the Register addressing the final rules:**

Notice of Rulemaking Docket Opening: June 15, 2007 (13 A.A.R. 2099)
- 4. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**

Name: Carrie Bojda
Address: Department of Environmental Quality
1110 W. Washington St.
Phoenix, AZ 85007
Telephone: (602) 771-4210 (This number may be reached in-state by dialing 1-800-234-5677 and requesting the seven digit number.)
Fax: (602) 771-2366
- 5. An explanation of the rules, including the agency's reasons for initiating the rules:**

Summary. ADEQ is proposing to change the fees it charges for air quality permits. The fees that would be affected are fees for permit actions, administrative and emission based fees for Title V sources, inspection fees for non-Title V sources, and fees for general permits. ADEQ is seeking an immediate effective date for these rules to ensure fund solvency.

Background: Arizona Revised Statutes, Title 49, Chapter 3, Article 2, Section 455 (A.R.S. § 49-455) established what is commonly referred to as the Air Permits Administration Fund (APAF). Pursuant to A.R.S. § 49-426(E), the Director of ADEQ was to establish by rule, a system of fees that was consistent with or equivalent to the fees that were prescribed by Section 502 of the Clean Air Act. In addition, the statute requires a system for collecting fees for permitting and inspecting sources which were required to obtain air quality permits pursuant only to state law.

When first established in 1993, revenues from the fee rule were primarily from annual emission-based fees assessed on sources subject to Title V of the Clean Air Act (40 CFR 70). One of the recognized issues related to the initial program was that the vast majority of revenues came from a relatively small number of sources, which financed a significant portion of program costs or activities related to a large number of small permitted sources. In addition, the dependence upon emissions fees made program funding vulnerable to curtailments in source operations.

ADEQ developed an updated workload analysis in 1999 of the costs associated with all components of the air quality programs and initiated a stakeholder process to develop a modified structure for revenues that would provide a more stable revenue stream and redistribute the cost of the permitting programs. Based upon this information, the stakeholder community hired the Kendall Group, Inc. to develop a model that would balance revenue-generating activities such as emissions fees, annual administrative/inspection fees, and hourly billable rates with the expenditures necessary to support the permitting and compliance programs for the Air Quality Division. This model resulted in a new fee rule that went into effect on January 1, 2002.

Revenues in Fiscal Year 2003, the first year of the revised fee rule, failed to meet projections. Total expenditures for that Fiscal Year were \$5.1 million, while revenues only realized \$3.4 million. Beginning in Fiscal Year 2004 (July 1, 2003 – June 30, 2004), actual revenues were insufficient to achieve on-going Fund solvency. In order to ensure the projected solvency of the Fund, subsidies from other funds (general and federal) were used until more permanent measures could be employed. In Fiscal Year 2005, ADEQ retained the services of the Kendall Group, Inc. to revisit the model used to establish the fee rule, resulting in a revision in November 2004. This revision again caused reve-

nues to more closely match projected expenditures. While the 2004 revisions increased revenues, they did not permanently resolve insolvency issues.

The Governor's Office of Strategic Planning and Budgets states that a fund demonstrates insolvency when an ending monthly balance has less than three months of operational monies. Using this definition, projections forecast that the APAF would be insolvent in November of 2007, while still reflecting a positive cash balance. Recent projections; however, forecast negative Fund balances beginning in September 2008 (Fiscal Year 2009).

Due to these projections, the model used to develop the fee rule in 2004 was again revisited to determine if it accurately predicted the costs associated with implementing the permitting and compliance programs. Changes were made to the model and resulting spreadsheet based on current conditions,* which resulted in the following recommendations:

- Permit processing fees should be increased from \$105.80 per hour to \$133.50 per hour to reflect the true burdened cost of providing permit processing services.
- Annual administrative fees should be raised from an average of \$3,874 to \$6,371 per source.
- The fee per ton of pollution emitted should be raised from \$14.17 to \$38.25.
- Any changes to the permit fee rules should become effective as soon as possible to address the aforementioned solvency issues.
- Periodic billing of permit processing fees should be implemented.
- Applicants using the Tier 4 method under R18-2-1708(B) for conducting a risk management analysis (RMA) should pay any costs incurred in ADEQ's contacting for, hiring or supervising work of outside consultants.
- The permit processing fee should apply to all new applications for Authorizations to Operate for new equipment.
- Permit applicants should pay the actual costs of public notice, which include publications and mailings.

Along with the above recommendations, additional amendments were made within the rule. The first, a new source category, Air Curtain Destructors, has been added based on a federal rulemaking. Second, a subsection has been added for Class I Title V Petroleum Refineries, based on the proposed Arizona Clean Fuels, Yuma L.L.C. Refinery.

ADEQ held three meetings in August 2007 to inform stakeholders of the seriousness of the problem and to discuss the upcoming proposed rule revisions. As a result, ADEQ is proposing to amend R18-2-326 and R18-2-511 to implement the recommendations noted above with an immediate effective date.

Section by Section Explanation of Significant Proposed Changes.

R18-2-326. Fees Related to Individual Permits: The amendments proposed in this Section would make several changes to the rule. First, the rule revision would raise the current permit processing fee from \$105.80 to \$133.50 per hour for all permit processing time required for a billable permit action. Second, administrative fees would be raised from an average of \$3,874 to \$6,371 per source. Third, emission fees would be raised from \$14.17 to \$38.25. Fourth, an owner or operator would be required to pay the actual costs of public notice according to R18-2-330. Fifth, periodic billing would be implemented for all fees based on the most recent accounting of ADEQ or contractor time spent processing a permit application. Sixth, Air Curtain Destructors would be added to the list of sources paying Class I Title V administrative fees. The addition of this source category reflects an amendment to the Federal New Source Performance published December 16, 2005, at 70 FR 74869. Seventh, if an applicant for a permit uses the Tier 4 method to conduct a Risk Management Analysis (RMA) under R18-2-1708(B), the applicant would pay all fees incurred for contacting, hiring or supervising the work of outside consultants. This would include other state agencies acting in that capacity. Finally, a subsection has been added to delineate the administrative fees that would be paid by Class I Title V Petroleum Refineries. Other minor and technical changes were made to this Section to improve clarity.

R18-2-511. Fees Related to General Permits: The amendments proposed in this Section parallel those in R18-2-326. First, administrative fees are proposed to be raised from an average of \$3,874 to \$6,371 per source. Second, an owner or operator with a general permit will pay the fee of \$500 for all new applications for Authorizations to Operate (ATOs) for new equipment. Third, the owner or operator of a source that is required to have a general permit and has undergone initial startup by January 1st will pay the applicable administrative or inspection fee. This proposed change applies to those operating facilities that have already applied for an air quality permit through ADEQ and have begun operation, but have not yet been issued the permit by the Department.

Immediate Effective Date: ADEQ is requesting an immediate effective date for these rules under A.R.S. § 41-1032. A.R.S. § 41-1032(A)(1) allows for an immediate effective date to preserve the public health or safety. If the APAF goes bankrupt, permitted sources will, in effect, be unregulated, thus putting the health and safety of the public at risk. A.R.S. § 41-1032(A)(2) also allows an immediate effective date in order to avoid a violation of federal law or regulations. Section 502(b)(3) of the Clean Air Act directs states to require source owner or operators to pay a fee sufficient to cover all reasonable costs required to develop and administer the Title V Operating Permit Program required by the

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Act. 40 CFR 70.9(b)(1) requires state permit programs to establish a fee schedule that results in the collection and retention of sufficient revenues to cover permit program costs.

* Permit Processing, Administrative, and Emissions-based fees are adjusted annually on November 1st by multiplying the current base year rate to the Consumer Price Index value which is published by the Bureau of Labor Statistics.

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

“Review, Assessment and Recommendations for the Arizona Department of Environmental Quality (ADEQ) Air Permits Administration Fund (Appropriated Fund 2200),” prepared by The Kendall Group, Inc., June 9, 2004.

“Arizona Department of Environmental Quality Revised White Paper for Permit Fee Amendments,” prepared by Eric C. Massey, August 10, 2007.

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

A. Rule Identification

This rulemaking amends A.A.C. R18-2-326, “Fees Related to Individual Permits” and A.A.C. R18-2-511, “Fees Related to General Permits.”

B. Executive Summary

The goal of this rulemaking is to balance the Air Permit Administration Fund (APAF) revenues with appropriate and necessary Air Quality Division expenditures. The incremental cost to the regulated community is represented by the change in costs for the permit program. Funds include an emissions-based fee, administrative and inspection fees, and an hourly rate fee.

Regulated sources in Arizona are expected to generate approximately \$7.9 million in annual revenues for Title V and Non-Title V permits. Annual revenues required to operate the air quality permits program were estimated at \$7.1 million. The difference between expected revenues and program costs represents an annual surplus to allow the APAF to remain solvent.

By balancing revenues and expenditures, the regulated community is avoiding the potential impacts of failure of the APAF. Under Title V of the Clean Air Act and federal implementing regulations, EPA would be forced to intervene and ADEQ would no longer be able to staff and operate the permitting program. Finally, the permit fees under this rule fund program operations such as inspections.

The proposed changes would become effective during Fiscal Year 2008. Adequate revenues to operate ADEQ’s air permit program will help improve air quality in the state and facilitate timely permit issuance. ADEQ expects that a well-functioning air permit program has potential to preserve a good business climate, increase opportunities for employment, and generate public health benefits.

C. Background

Arizona Revised Statutes, Title 49, Chapter 3, Article 2, Section 455 (A.R.S. § 49-455) established what is commonly referred to as the Air Permits Administration Fund (APAF). Pursuant to A.R.S. § 49-426(E), the Director of ADEQ was to establish by rule, a system of fees that was consistent with or equivalent to the fees that were prescribed by Section 502 of the Clean Air Act. In addition, the statute requires a system for collecting fees for permitting and inspecting sources which were required to obtain air quality permits pursuant only to state law.

When first established in 1993, revenues from the fee rule were primarily from annual emission-based fees assessed on sources subject to Title V of the Clean Air Act (40 CFR Part 70). One of the recognized issues related to the initial program was that the vast majority of revenues came from a relatively small number of sources, which financed a significant portion of program costs or activities related to a large number of small permitted sources. In addition, the dependence upon emissions fees made program funding vulnerable to curtailments in source operations.

ADEQ developed an updated workload analysis in 1999 of the costs associated with all components of the air quality programs and initiated a stakeholder process to develop a modified structure for revenues that would provide a more stable revenue stream and redistribute the cost of the permitting programs. Based upon this information, the stakeholder community hired the Kendall Group, Inc. to develop a model that would balance revenue-generating activities such as emissions fees, annual administrative/inspection fees, and hourly billable rates with the expenditures necessary to support the permitting and compliance programs for the Air Quality Division. This model resulted in a new fee rule that went into effect on January 1, 2002.

Revenues in Fiscal Year 2003, the first year of the revised fee rule, failed to meet projections. Total expenditures for that Fiscal Year were \$5.1 million, while revenues only realized \$3.4 million. Beginning in Fiscal Year 2004 (July 1, 2003 – June 30, 2004), actual revenues were insufficient to achieve on-going Fund solvency. In order to ensure the

projected solvency of the Fund, subsidies from other funds (general and federal) were used until more permanent measures could be employed. In Fiscal Year 2005, ADEQ retained the services of the Kendall Group, Inc. to revisit the model used to establish the fee rule, resulting in a revision in November 2004. This revision again caused revenues to more closely match projected expenditures. While the 2004 revisions increased revenues, they did not permanently resolve insolvency issues.

The Governor's Office of Strategic Planning and Budgets states that a fund demonstrates insolvency when an ending monthly balance has less than three months of operational monies. Using this definition, projections forecast that the APAF would be insolvent in November of 2007, while still reflecting a positive cash balance. Recent projections, however, forecast negative Fund balances beginning in September 2008 (Fiscal Year 2009).

This proposed rulemaking is needed to correct this deficiency.

D. Entities Directly Affected

ADEQ anticipates that this proposed rulemaking would impact approximately 740 currently permitted sources, as well as additional future sources. The current inventory includes sources holding Class I, Title V, Class II, Title V and Class II Non-Title V permits. Other entities impacted include ADEQ, consumers, and general public. Counties with their own permitting programs (Maricopa, Pinal, and Pima counties) may experience indirect impacts. A.R.S. § 49-112(B) requires county fees to be approximately equal to those of ADEQ. ADEQ has no information that the counties are experiencing revenue shortfalls.

E. Potential Costs and Benefits

ADEQ expects an increase in revenues from these rule changes that will be sufficient to efficiently and effectively operate its air permit administration program and ensure that the APAF will remain solvent.

Regulatory Agencies

To properly implement ADEQ's air quality permitting and compliance programs, seven additional FTEs will be required. The regulatory burden of monitoring, recordkeeping, reporting, and testing have grown but staff levels have remained constant.

An additional five FTEs are needed in order to ensure continued compliance with the monitoring strategy agreed upon with EPA which includes: performance measures, including complaint response, and to ensure effective ADEQ presence at the increasing number of stack tests required by air quality permits. These five FTEs will allow for adequate oversight of performance testing, stationary source inspections, and complaint response in areas of the state where ADEQ does not have field offices.¹

Additionally, most new sources of air pollution that enter the state require an ambient air quality dispersion modeling analysis in order to demonstrate that the new emissions of air pollution will not result in significant risk to public health. As a result, an additional FTE is needed to review the air dispersion modeling analyses submitted with air quality permit applications.

Along with modeling, many sources are required by their permits to operate ambient air monitoring systems. As a result, an additional FTE is needed to assist in the operation of new ambient air monitors, and quality assure and check the data being submitted by permitted facilities that are operating such equipment pursuant to a permit condition.

Other agencies are not expected to be directly impacted. ADEQ considers any impacts to sources in counties with their own pollution control programs to be indirect. ADEQ has no information that the counties are experiencing revenue shortfalls.

Regulated Community

Entities impacted include Class I Title V sources (e.g., Portland cement plants, combustion boilers, compressor stations, lime plants, mines, paper plants, smelters, utilities, and others); Class II Title V sources (synthetic minor sources, other stationary sources, portable sources, and small sources); Class II Non-Title V sources (smaller synthetic minor sources, stationary sources, portable sources, and others).

The revised fee schedule is as follows: hourly rate increased from \$105.80 to \$133.50; emission-based fees increased from \$14.17 to \$38.25; and average administrative fees increased approximately from \$3,874 to \$6,371 per source. The proposed emission-based fees and administrative or inspection fees would be increased over the 2006 fees, as adjusted by the Consumer Price Index consistent with R18-2-326. For additional information about permit fee adjustments, 2004 fee rule, and the proposed fee schedule, refer to Addendum A.

To revise the hourly rate, ADEQ reassessed the number of billable hours per employee, by adjusting non-program and program time, as well as the cost of management, technical and clerical personnel needed to supervise and support these employees.

Air Quality permit engineers are required to bill applicants for every hour spent processing an air quality permit application, producing an air quality permit, and developing the supporting documentation. The engineer's time has been broken down into two major categories, program time and non-program time.

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1. Non-Program Time

Non-program time is the category that includes such items as employee benefits (annual and sick leave, holidays), lost time due to employee turnover, and time spent doing work-related activities that are not otherwise billable. As compared to the 2004 estimates, the following changes are needed:

- Increase average employee annual leave usage rate from 96 to 120 hours per year:
 - » Average length of service for permit engineers is greater than 3 years, meaning the average engineer generates annual leave at a rate of 4.62 hours per pay period;
 - » All annual leave is assumed to be paid out annually - unspent accrued annual leave will be paid out to the employee at the time of separation.
- Increase average employee sick leave usage rate from 64 to 96 hours per year:
 - » Business Continuity Planning preparing for pandemic flu;
 - » Increased use of sick time already observed;
 - » Increased use of sick time for caring for ill family members also observed.
- Increase lost time due to turnover from 106 to 208 hours per year.
 - » Turnover is generally less than past rates, but the length of time necessary to fill vacant positions has increased. On the average, at least 1.5 FTEs that generate billable hours have been vacant over the course of a year (i.e. 10% vacancy). A 10% vacancy results in a loss of 208 hours per year per position.

2. Program Time

Program time is the category that includes activities that are directly related to the program, but may or may not be billable due to the fee rules in place. After reviewing the 2004 estimates, the following changes are included:

- Increase General Permit Development time from 50 to 60 hours per year per FTE
 - » Renewed general permits observed to take approximately 500 hours of development time. With nine active and contemplated general permits over 15 permit engineering positions, and five-year permit terms (9*500)/(15*5) = 60 hours per year.

3. Updated Burdened Rate Calculation (Per FTE)

The term “burdened rate” is used to describe an hourly fee that accounts not only for the costs of providing a service, but also for other costs associated with providing that service. The burdened rate in ADEQ’s air quality fee rule includes such costs as other operating expenses (i.e., supplies, office space, computer, etc.), indirect costs (i.e., administrative support, payroll, technology support, etc.), and the costs of oversight (i.e., time spent by the supervisor, manager, and Division Director).

The private market rate would typically range from \$130 to \$200 per hour.

ADEQ does not expect to negatively impact employment by increasing either structural or frictional unemployment, on either a long or short term basis.² Further, ADEQ does not expect this rulemaking to impact industrial production or growth, and no source is expected to reduce or halt its output as a result of the increased fees. Finally, ADEQ anticipates no adverse impact to source revenues or payrolls.

Consumers and Public

ADEQ expects a minimal impact to consumers and the general public. Although some sources may absorb the higher cost of doing business, other may pass on the higher costs to consumers, depending on market conditions and elasticities of buyers and sellers. Adjusting revenue streams for the Air Quality Division will facilitate timely issuance of air pollution control permits to further improve air quality and achieve national public health standards with appropriate permit conditions. Finally, maintaining adequate staffing levels for inspections, compliance, and enforcement increases incentives for compliance, actual compliance levels, and timely response to complaints. All of these reduce emissions from regulated sources, which in turn prevent adverse health effects that cost the public in medical care and lost productivity.

F. Potential Impacts to Small Businesses

State law requires agencies to reduce the impact of a rule on small businesses when legal and feasible. ADEQ considered each of the methods prescribed in A.R.S. §§ 41-1035 and 41-1055(B) for reducing the impact of this rule on small businesses: (1) exempt them from any or all rule requirements, (2) establish performance standards that would replace any design or operational standards, or (3) institute reduced compliance or reporting requirements, such as establishing less stringent requirements, consolidating or simplifying them or setting less stringent schedules or deadlines.

Considering the methods described above, one alternative that reduces costs for small businesses is for eligible sources to apply for a General Permit under R18-2-511. General Permits may reduce costs because sources would not

be required to pay an hourly permit processing fee. Other methods implementing the statutory objectives of this rule-making that might reduce the impact on small businesses or be less costly or intrusive would not be feasible.

ADEQ will continue to provide assistance to small businesses and other sources that request such assistance through the Small Business Assistance Program.

G. Endnotes

- ¹ The additional FTEs include one each for the Northern and Southern Regional Offices; three for Central Regional Office.
- ² Structural unemployment results from changes in the economy that cause the loss of jobs and create others for which the unemployed are unqualified, whereas frictional unemployment is caused from changing market conditions where the unemployed represent “qualified” persons with transferable skills. The latter can be caused by imperfect or incomplete information that prevents employees from leaving one job and finding another quickly.

Addendum A

Under R18-2-326, ADEQ must adjust permit fees every November 1 by using the Consumer Price Index (CPI) average for that year. The CPI for any year is the average CPI for all urban consumers (CPI-U), not seasonally adjusted. CPI values are published monthly by the Bureau of Labor Statistics, U.S. Department of Labor.

Each year, the fee will be adjusted by multiplying by the CPI-U for the most recent year and dividing by the CPI for the base year.

The hourly rate is for permit processing time required for a billable permit action under R18-2-326(B). The fee pertains to owners or operators of a Class I Title V source, Class II Title V source, or Class II Non-Title V source. The 2004 rate was \$98.80. The hourly rates, adjusted under R18-2-326(H), for November 1, 2005 and 2006 are: \$101.90 (\$98.80 x 192.8 / 187.0) and \$105.80 (\$98.80 x 200.3 / 187.0). The current proposed rate is \$133.50 per hour.

The emission-based fees, adjusted under R18-2-326(C)(2)(d), for November 1, 2005 and 2006 are: \$13.65 (\$13.24 x 192.8 / 187.0), and \$14.17 (\$13.24 x 200.3 / 187.0). The current proposed fee is \$38.25. This fee only applies to emissions up to 4,000 tons per year per regulated pollutant (except for carbon monoxide for which no fee is assessed).

The following tables show how the fees changed based on these adjustments and the proposed new rates. The last table pertains to General Permits.

Class I Title V Source Category [R18-2-326(C)]	Administrative Fee 2004	2005	2006	2007 Proposed
Aerospace	\$14,540	\$14,990	\$15,570	\$22,400
Air Curtain Destructors	-	-	-	\$840
Cement Plants	\$44,520	\$45,900	\$47,690	\$68,590
Combustion/Boilers	\$10,820	\$11,160	\$11,590	\$16,680
Compressor Stations	\$8,900	\$9,180	\$9,530	\$13,710
Electronics	\$14,320	\$14,760	\$15,340	\$22,070
Expandable Foam	\$10,260	\$10,580	\$10,990	\$15,810
Foundries	\$13,640	\$14,060	\$14,610	\$21,020
Landfills	\$11,150	\$11,500	\$11,940	\$17,190
Lime Plants	\$41,700	\$42,990	\$44,670	\$64,790
Mines	\$10,480	\$10,800	\$11,230	\$16,150
Mobile Home Mfg	\$10,370	\$10,690	\$11,110	\$16,150
Others	\$11,150	\$11,500	\$11,940	\$15,970
Others w/ CEM	\$14,320	\$14,760	\$15,340	\$22,060
Paper Mills	\$14,310	\$14,750	\$15,330	\$16,680
Paper Coaters	\$10,820	\$11,160	\$11,590	\$24,480
Petrol Prod Term Fac	\$15,890	\$16,380	\$17,020	\$22,060
Petroleum Refinery	N/A	N/A	N/A	\$16,680
Polymeric Fabric Coaters	\$14,310	\$14,750	\$15,330	\$29,010
Reinforced Plastics	\$10,820	\$11,160	\$11,590	\$68,590
Semiconductor Fab	\$18,830	\$19,410	\$20,170	\$17,710

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Copper Smelters	\$44,520	\$45,900	\$47,690	\$35,080
Utilities - Natural Gas	\$11,490	\$11,850	\$12,310	\$17,020
Utilities - Fossil Fuel	\$22,760	\$23,470	\$24,380	\$16,680
Vit/Pharm Mfg	\$11,050	\$11,390	\$11,840	\$22,070
Wood Furniture	\$10,820	\$11,160	\$11,590	\$22,070

Fees adjusted to the nearest \$10.00 pursuant to R18-2-326(C).

CLASS II Title V Source Category [R18-2-326(D)]	Administrative Fee 2004	2005	2006	2007 Proposed
Synthetic minor sources	*	*	*	*
Stationary	\$5,640		\$5,810	\$8,690
Portables	\$5,640	\$5,810	\$6,040	\$8,690
Small Source	\$560	\$580	\$600	\$840

Fees adjusted to the nearest \$10.00 pursuant to R18-2-326(D).

*See the Class I Title V table. The administrative fees are as follows: for a synthetic minor, except a portable source, it is the same as the fee from Class I title V for that category; for a stationary and a portable source, it is \$5,640; for a small source, it is \$560.

Class II Non-Title V Source Category [R18-2-326(E)]	Inspection Fee 2004	2005	2006	2007 Proposed
Stationary	\$3,660	\$3,770	\$3,920	\$5,630
Portables	\$3,660	\$3,770	\$3,920	\$5,630
Gasoline Stations	\$560	\$580	\$600	\$840

Fees adjusted to the nearest \$10.00 pursuant to R18-2-326(E).

General Permits Administrative Fee [R18-2-511(B)]	2004	2005	2006	2007 Proposed
Class I Title V	*	*	*	*
Class II Title V Small	\$540	\$540	\$540	\$840
Other Class II Title V	\$3,250	\$3,250	\$3,250	\$4,870
General Permits Inspection Fee [R18-2-511(B)]				
Class II Non-Title V Gasoline Stations	\$540	\$540	\$540	-
Class II Non-Title V Crematories	\$1,080	\$1,080	\$1,080	\$1,620
Other Class II Non-Title V	\$2,170	\$2,170	\$2,170	\$3,250

* Administrative fee for category from R18-2-326(C)

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 St.
 Phoenix, AZ 85007

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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@azdeq.gov

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:

When: 3:00 p.m., October 18, 2007
Location: Conference Room 250
1110 W. Washington St.
Phoenix, AZ 85007

Close of Comment: October 18, 2007, 5:00 p.m.

11. Any other matter prescribed by statute that is applicable to the specific agency or to any other 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 18. ENVIRONMENTAL QUALITY

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

ARTICLE 3. PERMIT AND PERMIT REVISIONS

Section

R18-2-326. Fees Related to Individual Permits

ARTICLE 5. GENERAL PERMITS

Section

R18-2-511. Fees Related to General Permits

ARTICLE 3. PERMITS AND PERMIT REVISIONS

R18-2-326. Fees Related to Individual Permits

A. Source Categories. The owner or operator of a source required to have an air quality permit from the Director shall pay the fees described in this Section unless authorized to operate under a general permit issued under Article 5. The fees are based on a source being classified in one of the following three categories:

1. Class I Title V sources are those required or that elect to have a permit under R18-2-302(B)(1).
2. Class II Title V sources are those required to have a permit under R18-2-302(B)(2) and for which either R18-2-302(B)(2)(a)(i) or (ii) applies.
3. Class II Non-Title V sources are those required to have a permit under R18-2-302(B)(2) and for which neither R18-2-302(B)(2)(a)(i) nor (ii) applies.

B. Fees for Permit Actions.

1. The owner or operator of a Class I Title V source, Class II Title V source, or Class II Non-Title V source shall pay to the Director the following:
 - a. ~~\$98.80~~ \$133.50 per hour, adjusted annually under subsection (H), for all permit processing time required for a billable permit action; and
 - b. the actual costs of public notice conducted according to R18-2-330.
2. The Director may require periodic payment of permit processing fees based on the most recent accounting of time spent processing the permit including any fees for contractors.
3. Upon completion of permit processing activities other than issuance or denial of the permit or permit revision, the Director shall send notice of the decision to the applicant along with a final itemized bill. The maximum fee for any billable permit action for a non-Title V source is \$25,000. Except as provided in subsection (G), the Director shall not issue a permit or permit revision until the final bill is paid in full.

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C. Class I Title V Fees. The owner or operator of a Class I Title V source that has undergone initial startup by January 1 shall annually pay to the Director an administrative fee plus an emissions-based fee as follows:

1. The applicable administrative fee from the table below, as adjusted annually under subsection (H). The fee is due by February 1 or 60 days after the Director mails the invoice under subsection (F), whichever is later.

Class I Title V Source Category	Administrative Fee
Aerospace	\$ 14,450 \$ 22,400
<u>Air Curtain Destructors</u>	<u>\$ 840</u>
Cement Plants	\$ 44,520 <u>\$ 68,590</u>
Combustion/Boilers	\$ 10,820 <u>\$ 16,680</u>
Compressor Stations	\$ 8900 <u>\$ 13,710</u>
Electronics	\$ 14,320 <u>\$ 22,070</u>
Expandable Foam	\$ 10,260 <u>\$ 15,810</u>
Foundries	\$ 13,640 <u>\$ 21,020</u>
Landfills	\$ 11,150 <u>\$ 17,190</u>
Lime Plants	\$ 41,700 <u>\$ 64,790</u>
Copper & Nickel Mines	\$ 10,480 <u>\$ 16,150</u>
Gold Mines	\$ 10,480 <u>\$ 16,150</u>
Mobile Home Manufacturing	\$ 10,370 <u>\$ 15,970</u>
Paper Mills	\$ 14,310 <u>\$ 22,060</u>
Paper Coaters	\$ 10,820 <u>\$ 16,680</u>
Petroleum Products Terminal Facilities	\$ 15,890 <u>\$ 24,480</u>
Polymeric Fabric Coaters	\$ 14,310 <u>\$ 22,060</u>
Reinforced Plastics	\$ 10,820 <u>\$ 16,680</u>
Semiconductor Fabrication	\$ 18,830 <u>\$ 29,010</u>
Copper Smelters	\$ 44,520 <u>\$ 68,590</u>
Utilities - Natural Gas	\$ 11,490 <u>\$ 17,710</u>
Utilities - Fossil Fuel Except Natural Gas	\$ 22,760 <u>\$ 35,080</u>
Vitamin/Pharmaceutical Manufacturing	\$ 11,050 <u>\$ 17,020</u>
Wood Furniture	\$ 10,820 <u>\$ 16,680</u>
Others	\$ 11,150 <u>\$ 22,070</u>
Others with Continuous Emissions Monitoring	\$ 14,320 <u>\$ 22,070</u>

2. An emissions-based fee of ~~\$13.24~~ \$38.25 per ton of actual emissions of all regulated pollutants emitted during the previous calendar year ending 12 months earlier. The fee is adjusted annually under subsection (d) and due by February 1 or 60 days after the Director mails the invoice under subsection (F), whichever is later.
 - a. For purposes of this Section, “actual emissions” means the quantity of all regulated pollutants emitted during the calendar year, as determined by the annual emissions inventory under R18-2-327.
 - b. For purposes of this Section, regulated pollutants consist of the following:
 - i. Nitrogen oxides and any volatile organic compounds;
 - ii. Conventional air pollutants, except carbon monoxide and ozone;
 - iii. Any pollutant that is subject to any standard promulgated under Section 111 of the Act, including fluorides, sulfuric acid mist, hydrogen sulfide, total reduced sulfur, and reduced sulfur compounds; and
 - iv. Any federally listed hazardous air pollutant.
 - c. For purposes of this Section, the following emissions of regulated pollutants are excluded from a source’s actual emissions:
 - i. Emissions of any regulated pollutant from the source in excess of 4,000 tons per year;
 - ii. Emissions of any regulated pollutant already included in the actual emissions for the source, such as a federally listed hazardous air pollutant that is already accounted for as a VOC or as PM₁₀;
 - iii. Emissions from insignificant activities listed in the permit application for the source under R18-2-304(E)(8);
 - iv. Fugitive emissions of PM₁₀ from activities other than crushing, belt transfers, screening, or stacking; and
 - v. Fugitive emissions of VOC from solution-extraction units.

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d. The Director shall adjust the rate for emission-based fees every November 1, ~~beginning on November 5, 2004~~ after December 4, 2007, by multiplying ~~\$13.24~~ \$38.25 by the Consumer Price Index (CPI) for the most recent year, and then dividing by the CPI for the year ~~2004~~ 2007. The Consumer Price Index for any year is the average of the Consumer Price Index for all-urban consumers published by the United States Department of Labor, as of the close of the 12-month period ending on August 31 of that year.

D. Class II Title V Fees. The owner or operator of a Class II Title V source that has undergone initial startup by January 1 shall pay the applicable administrative fee from the table below, adjusted under subsection (H), for that calendar year, and annually thereafter. The fee is due by February 1 or 60 days after the Director mails the invoice under subsection (F), whichever is later.

CLASS II Title V Source Category	Administrative Fee
Synthetic minor sources, except portable sources	Administrative fee from Class I Title V table for category
Stationary	\$ 5,640 <u>\$ 8,690</u>
Portables	\$ 5,640 <u>\$ 8,690</u>
Small Source	\$ 560 <u>\$ 840</u>

E. Class II Non-Title V Fees. The owner or operator of a Class II Non-Title V source that has undergone initial startup by January 1 shall pay the applicable inspection fee from the table below, adjusted under subsection (H), for that calendar year, and annually thereafter. The fee is due by February 1 or 60 days after the Director mails the invoice under subsection (F), whichever is later.

Class II Non-Title V Source Category	Inspection Fee
Stationary	\$ 3,660 <u>\$ 5,630</u>
Portables	\$ 3,660 <u>\$ 5,630</u>
Gasoline Service Stations	\$ 560 <u>\$ 810</u>

F. The Director shall mail the owner or operator of each source an invoice for all fees due under subsections (C), (D), or (E) by December 1.

G. Any person who receives a final itemized bill from the Director under this Section for a billable permit action may request an informal review of the hours billed and may pay the bill under protest as provided below:

1. The request shall be made in writing, and received by the Director within 30 days of the date of the final bill. Unless the Director and person agree otherwise, the informal review shall take place within 30 days after the Director's receipt of the request. The Director shall arrange the date and location of the informal review with the person at least 10 business days before the informal review. The Director shall review whether the amounts of time billed are correct and reasonable for the tasks involved. The Director shall mail his or her decision on the informal review to the person within 10 business days after the informal review date.
2. The Director's decision after informal review shall become final unless, within 30 days after person's receipt of the informal review decision, the person requests a hearing under R18-1-202.
3. If the final itemized bill is paid under protest, the Director shall take final action on the permit or permit revision.

H. The Director shall adjust the hourly rate every November 1, to the nearest 10 cents per hour, ~~beginning on November 5, 2004, after December 4, 2007~~, by multiplying ~~\$ 98.80~~ \$133.50 by the Consumer Price Index (CPI) for the most recent year, and then dividing by the CPI for the year ~~2004~~ 2007. The Director shall adjust the administrative or inspection fees listed in subsections (C), (D), and (E) every November 1, to the nearest \$10, ~~beginning on November 5, 2004~~ December 4, 2007, by multiplying the administrative or inspection fee by the Consumer Price Index (CPI) for the most recent year, and then dividing by the CPI for the year ~~2004~~ 2007. The Consumer Price Index for any year is the average of the Consumer Price Index for all-urban consumers published by the United States Department of Labor, as of the close of the 12-month period ending on August 31 of that year.

I. An applicant for a Class I or Class II permit or permit revision may request that the Director provide accelerated processing of the application by providing the Director written notice 60 days before filing the application. The request shall be accompanied by an initial fee of \$15,000. The fee is non-refundable to the extent of the Director's costs for accelerating the processing if the Director undertakes the accelerated processing described below:

1. If an applicant requests accelerated permit processing, the Director may, to the extent practicable, undertake to process the permit or permit revision according to the following schedule:
 - a. For applications for initial Class I and II permits under R18-2-302 or significant permit revisions under R18-2-320, the Director shall issue or deny the proposed permit or permit revision within 120 days after the Director determines that the application is complete.
 - b. For minor permit revisions under R18-2-319, the Director shall issue or deny the permit revision within 60 days

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after receiving a complete application.

2. At any time after an applicant requests accelerated permit processing, the Director may require additional advance payments based on the most recent estimate of additional costs.
 3. Upon completion of permit processing activities but before issuance or denial of the permit or permit revision, the Director shall send notice of the decision to the applicant along with a final bill. The maximum fee for any billable permit action for a non-Title V source is \$25,000. The final bill shall include all regular permit processing and other fees due, and, in addition, the difference between the cost of accelerating the permit application, including any costs incurred by the Director in contracting for, hiring, or supervising the work of outside consultants, and all advance payments submitted for accelerated processing. In the event all payments made exceed actual accelerated permit costs, the Director shall refund the excess advance payments. Nothing in this subsection affects the public participation requirements of R18-2-330, or EPA and affected state review as required under R18-2-307 or R18-2-319.
- J.** Inactive Sources. The owner or operator of a permitted source that has undergone initial startup but was shut down for the entire preceding year shall pay 50 percent of the administrative or inspection fee required under subsection (C), (D), or (E). The owner or operator of a source claiming inactive status under this subsection shall submit a letter to the Director by ~~October~~ December 15 of the ~~billing~~ calendar year for which the source was inactive. Termination of a permit does not relieve a source of any past fees due.
- K.** If an applicant uses the Tier 4 method for conducting a risk management analysis (RMA) according to R18-2-1708(B), the applicant shall pay any costs incurred by the Director in contracting for, hiring or supervising work of outside consultants.
- L.** Fees for Class I Title V Petroleum Refineries. The owner or operator of a Class I Title V petroleum refinery for which construction has commenced after January 1, 2007, shall pay to the Director an administrative fee plus an emissions-based fee annually as follows:
1. The applicable administrative fee from the table below, as adjusted annually under subsection (H). The fee is due by February 1 or 60 days after the Director mails the invoice under subsection (F), whichever is later.

<u>Class I Title V Refinery</u>	<u>Administrative Fee</u>
<u>Calendar Year During Which Commencement of Construction Occurred</u>	<u>\$ 96,250</u>
<u>First Calendar Year After Commencement of Construction</u>	<u>\$ 192,500</u>
<u>Second Calendar Year After Commencement of Construction</u>	<u>\$ 288,750</u>
<u>Each Subsequent Calendar Year After Commencement of Construction but Before Initial Startup</u>	<u>\$ 385,000</u>
<u>Each Calendar Year of or After Initial Start-Up</u>	<u>\$ 385,000</u>

2. An emissions-based fee for actual emissions of all regulated pollutants emitted during the previous calendar year ending 12 months earlier that shall be paid as described in subsection (C)(2).

~~K-M.~~ Transition.

1. Subsections (A) through (J) of this Section are effective ~~November 5, 2004~~ December 4, 2007. The first administrative or inspection fees are due on February 1, ~~2005~~ 2008.
2. Except as provided in subsection (b), all fees incurred after ~~November 5, 2004~~ December 4, 2007, are payable in accordance with the rates contained in this Section.
 - a. Emission-based fees for calendar year ~~2003~~ 2006 shall be billed at ~~\$13.24~~ \$38.25 per ton and be due February 1, ~~2005~~ 2008.
 - b. The hourly rates and maximum fees for a new permit or permit revision are those in effect when the application for the permit or revision is determined to be complete.
 - c. Fees accrued but not yet paid before the effective date of this Section remain as obligations to be paid to the Department.

ARTICLE 5. GENERAL PERMITS

R18-2-511. Fees Related to General Permits

- A.** Permit Processing Fee. The owner or operator of a source that applies for authority to operate under a general permit shall pay to the Director \$500 with the submittal of ~~the each~~ application. This fee applies to the owner or operator of any source who intends to continue operating under the authority of a general permit that has been proposed for renewal. This fee also applies to requests for new Authorizations to Operate (ATOs) for new equipment.
- B.** Administrative or Inspection Fee. The owner or operator of a source ~~with authority required to operate under~~ have a general permit, ~~that has undergone initial startup by January 1,~~ shall pay, for each calendar year, the applicable administrative

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or inspection fee from the table below, by February 1 or 60 days after the Director mails the invoice, whichever is later.

General Permit Source Category	Administrative Fee
Class I Title V General Permits	Administrative fee for category from R18-2-326(C)
Class II Title V Small Source	\$ 540 <u>\$ 840</u>
Other Class II Title V General Permits	\$ 3,250 <u>\$ 4,870</u>
	Inspection Fee
Class II Non-Title V Gasoline Services	\$ 540
Class II Non-Title V Crematories	\$ 1,080 <u>\$ 1,620</u>
Other Class II Non-Title V General Permits	\$ 2,170 <u>\$ 3,250</u>