

NOTICES OF FINAL RULEMAKING

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

NOTICE OF FINAL RULEMAKING

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 19. BOARD OF NURSING

PREAMBLE

- | | |
|------------------------------------|---------------------------------|
| 1. <u>Sections Affected</u> | <u>Rulemaking Action</u> |
| R4-19-309 | New Section |
- 2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**
Authorizing statutes: A.R.S. §§ 32-1606(A)(1) and 32-1668
Implementing statutes: A.R.S §§ 32-1668 and 32-1669
- 3. The effective date for the rule:**
March 20, 2002
- 4. List of all previous notices appearing in the register addressing the proposed rule:**
Notice of Rulemaking Docket Opening: 7 A.A.R. 5489, December 14, 2001
Notice of Proposed Rulemaking: 7 A.A.R. 5480, December 14, 2001
- 5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
- | | |
|------------|--|
| Name: | Pamela K. Randolph |
| Address: | State Board of Nursing
1651 E. Morten, Suite 210
Phoenix, AZ 85020 |
| Telephone: | (602) 331-8111, ext. 139 |
| Fax: | (602) 906-9365 |
- 6. An explanation of the rule, including the agency's reasons for initiating the rule:**
The Board of Nursing is adopting this rule to comply with the provisions of the Nurse Licensure Compact (compact) enacted by the Forty-fifth Legislature during the First Session, 2001. The rules are incorporated by reference to model compact rules previously agreed upon by all compact states. All states currently in the compact have enacted these same rules.
- 7. A reference to any study that the agency relied on in its evaluation of or justification for the 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
- 8. A showing of good cause why the rule is necessary to promote a statewide interest if the rule will diminish a previous grant of authority of a political subdivision of this state:**
Not applicable
- 9. The summary of the economic, small business, and consumer impact:**
The rules are necessary to comply with the compact provision. The compact will have a positive economic impact on employers, small businesses, and licensees. The compact will allow nurses to work in Arizona while maintaining a permanent residence in another compact state without obtaining a separate Arizona license. This will save licensees \$186.00 and the time and effort of obtaining a license in Arizona. Arizona licensees will benefit by being able to use their Arizona licenses to practice in compact states while maintaining residence in Arizona. Small businesses and

Notices of Final Rulemaking

employers will be able to employ nurses from other states in a timely manner because licensees from compact states can work immediately upon entering the state without the delay entailed in obtaining state licensure. Licensees in Arizona will benefit by having a license that has a greater value because it is valid in 16 or more jurisdictions.

The Board will experience a negative economic impact because of decreased licensure fees from nurses residing in party states and other costs associated with compact membership. Compact states currently report no significant drops in revenue or need to increase licensing fees related to enacting the compact. The Board anticipates that no fee increase will be needed in the next fiscal year because of the compact. While licensing fees may increase as more states join the compact, the license also would increase in value. The Board will also incur additional expenses related to changing licensure processes as provided for in the compact.

The Board is expected to offset some expenses because the compact allows member boards to share investigative data, thereby saving resources currently spent in duplicating investigations. The Board will also be able to decrease the number of hours employees devote to licensing because of the decreased number of licenses requested by nurses working temporarily in Arizona.

10. A description of the changes between the proposed rules, including supplemental notices, and final rules:

Various technical and grammatical changes were made at the suggestion of G.R.R.C. staff and to comply with rule-writing procedures of the Secretary of State.

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

On January 14, 2002, a public oral proceeding was held regarding the Notice of Proposed Rulemaking. Mary Griffith, representing the Arizona Nurses Association, attended and offered testimony in support of the rules. The Board has not received any other comments on this rulemaking.

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

Not applicable

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

R4-19-309 will incorporate model nurse licensure compact rules by reference.

14. Whether the rule was previously made as an emergency rule and, if so, whether the text was changed between making as an emergency and the making of these final rules:

This rule was never made as an emergency rule.

15. The full text of the rule follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 19. BOARD OF NURSING

ARTICLE 3. LICENSURE

Section

R4-19-309. ~~Repealed~~ Nurse Licensure Compact

ARTICLE 3. LICENSURE

R4-19-309. ~~Repealed~~ Nurse Licensure Compact

The Board shall implement A.R.S. §§ 32-1668 and 32-1669 according to the provisions of the Nurse Licensure Compact: Model Rules and Regulations, published by the National Council of State Boards of Nursing, Inc., 676 N. St. Clair Street, Suite 550, Chicago, IL, 60611, November 2, 1999, and no later amendments or editions, which is incorporated by reference and on file with the Board and the Office of the Secretary of State.

NOTICE OF FINAL RULEMAKING

TITLE 18. ENVIRONMENTAL QUALITY

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

PREAMBLE

1. Sections Affected

R18-2-330
R18-2-404
R18-2-1201
R18-2-1202
R18-2-1203
R18-2-1204
R18-2-1205
R18-2-1206
R18-2-1207
R18-2-1208

Rulemaking Action

Amend
Amend
New Section
New Section
New Section
New Section
New Section
New Section
New Section
New Section

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

Authorizing statutes: A.R.S. §§ 49-104(A)(11) and 49-425
Implementing statute: A.R.S. § 49-410

3. The effective date of the rule:

March 20, 2002

4. List of all previous notices appearing in the register addressing the rule:

Notice of Rulemaking Docket Opening: 7 A.A.R. 2015, May 4, 2001
Notice of Proposed Rulemaking: 5 A.A.R. 2318, June 8, 2001
Notice of Public Information: 7 A.A.R. 3411, August 3, 2001

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

Name: Deborah "Corky" Martinkovic
Address: ADEQ, Air Quality Planning Section
3003 N. Central Ave.
Phoenix, AZ 85012-2809
Telephone: (602) 207-2372 (Any extension may be reached in-state by dialing 1-800-234-5677, and asking for that extension.)
Fax: (602) 207-2366
E-mail: martinkovic.deborah@ev.state.az.us

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

Summary. This rule amends existing rules and establishes a new Article to create an Arizona emissions bank. The rule implements A.R.S. § 49-410, under which, "a permitted source that reduces emissions of particulate matter, sulfur dioxide, carbon monoxide, nitrogen dioxide or volatile organic compounds by an amount greater than that required by applicable law, rule, permit or order shall be granted credit [that] . . . shall be deposited into the Arizona emissions bank." The rule prescribes how the bank works, but does not describe or amend what, with the exception of amendments to R18-2-404(A) and R18-2-404(J), related permitting requirements.

Statutory Authority

A.R.S. § 49-410 directs ADEQ to establish and administer an Arizona emissions bank. The statute provides that a permitted source that reduces emissions of specified air pollutants by an amount greater than otherwise legally required "shall be granted credit in an amount determined by the department of environmental policy." A.R.S. § 49-410 (B). The statute goes on to provide that the credit "shall be deposited into the Arizona emissions bank." *Id.* The statute sets forth conditions for an emissions reduction to be eligible for credit and deposit in the Arizona emissions bank, including that the reduction be permanent, quantifiable and otherwise enforceable, and occur after the effective date of the statute (Aug. 17, 1999). *Id.* The statute notes, however, that it does not prohibit a source from receiving

Arizona Administrative Register
Notices of Final Rulemaking

credit by means other than the Arizona emissions bank for emission reductions that occurred before the effective date of the statute. *Id.*

The statute directs ADEQ to register, certify or otherwise approve the amount of the credit before the credit is banked and later used, but allows ADEQ to delegate the certification duties to a county or multi-county air quality control region. A.R.S. § 49-410 (C). The statute also sets forth conditions under which a credit may be used, traded, or sold. *Id.* The statute provides that by January 1, 2002, ADEQ adopt rules to implement and administer the Arizona emissions bank and establish the criteria for determining the amount of the emissions credit. A.R.S. § 49-410 (D). The statute provides for the establishment of fees by ADEQ or a county that has been delegated authority to certify emissions credits. *Id.* The statute specifies that in setting the fee, the director and county “shall consider the likely economic value of the credits and set a fee that does not discourage the banking of emissions credit.” *Id.*

Some have questioned whether the statutory language mandates a permitted source to transfer all eligible emission reductions into the Arizona emissions bank for credit. ADEQ does not believe this is the intent of the statute. ADEQ interprets the statute to direct ADEQ to grant and deposit credit if and when a permitted source requests that eligible reductions be deposited into the emissions bank. This interpretation, allowing voluntary participation by permitted sources, arises from the statutory language and the potential impact on other ADEQ emission programs. The statute provides that ADEQ and a county with delegated certification authority shall set a fee “that does not discourage the banking of emissions credit.” A.R.S. § 49-410(D). Only voluntary participation can be “discouraged.” Voluntary participation in the bank also allows the continuation of the existing offset and net air quality benefits program which allows a permitted source to directly offset emission increases with emission reduction in certain circumstances.

Background. During the past ten to fifteen years, regulatory policy has been shifting from the standard “command and control” approach to more incentive-based programs known as “command and market.” During this time EPA, along with several states and local air quality districts, have been implementing emission reduction trading programs. Examples are EPA’s Acid Rain Trading Program and the South Coast Air Quality Management District RECLAIM program. The Governor’s Air Quality Strategies Task Force of 1997-1998 issued a recommendation for an air pollution credit clearinghouse or bank to facilitate emission offsets and reduction activities for criteria air pollutants within Arizona. In 1999, the Legislature passed House Bill (HB) 2594 (Laws 1999, Chapter 343) to achieve this recommendation. HB 2594 became effective August 17, 1999. The proposed rule would codify A.R.S. § 49-410 within the Arizona Administrative Code, Title 18, Chapter 2 - Environmental Quality, Air Pollution Control.

Without the costly services of a broker or consultant, the general public and sources had previously limited avenues for obtaining information related to credit availability. The promulgation of the rule creates equal access to information for generating and utilizing sources and the general public. The intent of the rule is to establish a bank that will provide an economic incentive for permitted sources to reduce emissions above and beyond what is required while providing a mechanism to facilitate the expansion or creation of businesses in Arizona. The rule accomplishes this by: (1) creating a clearinghouse available to the public regarding available emission reduction credits; (2) establishing operating parameters for the bank through the existing permitting process; and (3) assuring there is an air quality benefit for Arizona citizens, while allowing sources to economically benefit from the sale or purchase of emission reduction credits.

Currently, permitted sources in Arizona are subject to the federal New Source Review (NSR) program. The NSR program requires major sources wishing to locate or expand in areas not meeting federal ambient air quality standards (nonattainment areas) to offset new emissions with emission reductions from other sources that are greater than the emission increases from the new or modified facility.¹ Sources needing to offset new emissions must find a source within reasonable proximity with available emission reductions. This can be difficult. Sources considering a surplus reduction must also weigh the cost of reducing emissions through a modification or shutdown against an available market for emission reduction credits obtained from the voluntary reduction. This may include the cost of using a consultant or broker against any potential financial benefit from selling emission reduction credits. Conversely, a source needing credits to offset emissions increases due to modification of an existing facility, or a source needing offsets for a new facility, must weigh any benefit from expanding operations or start-up of a new facility against similar costs such as using a broker.

[¹ Offset requirements sources are required to meet are found in the Clean Air Act. These requirements are dependant upon the attainment classification of the area. For example, a Moderate Nonattainment area might require a 1.1:1 offset ratio, where a Serious Nonattainment area might require a 1.3:1 offset ratio.]

The bank may be considered a clearinghouse because of a reducing source’s ability to “save” emission credits by banking them where the emission reduction credit information is available for public access. A buyer benefits from having easy access to information related to available emission reduction credits. Moreover, both types of sources may find there is no need for a consultant or broker. The rule allows for uniformity and consistency for permitted sources and permitting authorities because the credit generation and credit utilization components are part of an existing permitting process. Such uniformity and consistency increase the chances that more sources will participate in the banking program.

Finally, the rule assures the program provides an air quality benefit through the 10 percent retirement of emissions at the time of deposit. Numerous trading programs throughout the country require a 10 percent discount upon certification or deposit of the credit. Some banks require a 10 percent discount upon the use of a banked credit, but Arizona

Arizona Administrative Register
Notices of Final Rulemaking

discussed this option with stakeholders who opted for the air quality benefit to be taken at the time of deposit. An informal survey completed by ADEQ in August 1999, determined that 8 states or air quality districts with similar trading programs discounted credits by 10 percent: Santa Barbara County, Colorado, Delaware, Illinois, Michigan, New Hampshire, New Jersey, and Texas. In addition, California Air Resources Board allowed each district to request a discount of 10 percent upon deposit if needed by the specific air quality district. The determination of a 10 percent discount reflects the convention of applying an amount charged by programs similar to Arizona's, while banks that operate with more complex trading programs or banks that operate in severe nonattainment areas are considering or have implemented a 20 percent discount. New Jersey, for example, has recently increased the discount to 20 percent under certain circumstances. An air quality benefit is also achieved when a person purchases and retires credits, thereby permanently reducing emissions in a particular area. While the 10 percent discount ensures some level of air quality benefit, the program allows sources to maximize opportunities for economic benefits because of a known market for credits and potential for expansion.

Statutory language establishes the bank and the basis for emission reduction credits. A.R.S. § 49-410 also sets standards for the operation of the bank and the certification and use of emission reduction credits. To be certified, emission reductions of particulate matter, sulfur dioxide, carbon monoxide, nitrogen oxides, or volatile organic compounds must be at a permitted source, occur after August 17, 1999, be "an amount greater than that required by applicable law, rule, permit or order,"² and be permanent, quantifiable, and otherwise enforceable. This program does not provide for the banking of hazardous air pollutants (HAPs).

[²A.R.S. 49-410, Arizona emissions bank, p. 228, *Arizona Laws Relating to Environmental Quality, 2001-2002 edition*. Also located electronically under "statutes" at www.azleg.gov.]

The statute sets standards for the use of the certified emission reduction credits by restricting their use to the same pollutant as well as the same nonattainment, maintenance, or modeling domain area in which the emission reduction occurred. Furthermore, there must be no adverse impact on the air quality. Any source wishing to participate in the bank program must be permitted, which is the process to ensure the permanence, quantification, and enforceability of credit generation or credit utilization. Statutory language provides that emission reductions that generate credits for deposit in the bank must occur after the effective date of the statute, which is August 17, 1999. Neither this rule nor A.R.S. § 49-410 restricts the generation or utilization of emission reduction credits outside the Arizona emissions bank. If a source generates or utilizes emission reduction credits through another trading program (for example, EPA's acid rain program), such emission reduction credits are no longer available to be traded through the Arizona emissions bank.

Traditionally, the two participants in the permitting process are the source and the regulatory agency. Under this proposed rule this will not change, nor will the bank take over either of these roles. The bank is a mechanism for depositing emission reduction credits for later use, and reporting on the availability of emission reduction credits for future use. The bank is administered by the Arizona Department of Environmental Quality (ADEQ). As administrator, the bank posts emission reduction credit information on an electronic registry so sources can locate current credit availability. ADEQ has the authority to establish the criteria to determine the amount of the emission credit; it does not set the market value of the credits. Any source wishing to generate an emission reduction credit for deposit in the bank must obtain a permit revision, or surrender a permit in the case of a shutdown, from the state or county agency that has permitting authority over that source. A source wishing to utilize emission reduction credits would obtain a permit revision or a new permit. It must be noted that this rule does not alter the part of the permitting process whereby new sources or existing major sources involved in major modifications must also satisfy existing Clean Air Act New Source Review (NSR) or Prevention of Serious Deterioration (PSD) requirements, as contained in 18 A.A.C. 2, Article 4. The NSR program requires credits applied as offsets for new or modifying sources in the NSR program to be contemporaneous. Contemporaneous has been defined at both the federal and state level as 5 years.

ADEQ has moved the statement about credits not "expire" [ing] from R18-2-1206 to R18-2-1205(D) because it did not require a whole Section. The statement clarifies that nothing in the Bank Article has any effect on the life of the credits in the bank. There are other programs, such as the NSR program (see 18 A.C.C. 2, Article 4) that may affect how and when they can be utilized.

The largest number of sources emitting air pollutants in the state is permitted by Maricopa County. Two other local permitting authorities exist: Pinal County and Pima County. A.R.S. § 49-410(C) allows ADEQ to delegate the certification of emission reduction credits to a county or air quality control region for which the state and counties could revise the existing delegation agreements. Therefore, in the proposed rule (R18-2-1201), the term, "permitting authority" is defined as, "the state or county that has: (a) Jurisdiction over a source under A.R.S. § 49-402 for the review, issuance, revision, administration, and enforcement of a permit; (b) Authority to certify a credit under this Section." For the benefit of all permitted sources, during any future revisions to the licensing time-frames rule (Title 18, Chapter 1, Article 5 of the Arizona Administrative Code), ADEQ will make appropriate rule revisions related to credit generation and utilization. To facilitate public notification of permit actions involving emission reduction credits, revisions to Arizona Administrative Code, Title 18, Chapter 2, Article 3 are proposed. Such notice that a project may include emission reduction credits provides citizens with the opportunity to review and comment regarding any perceived impact on local air quality.

Section-by-Section Explanation for the Rule

R18-2-330(D)(12). This proposed change amends permit public notice requirements to reflect credit generation or utilization.

R18-2-404(A). This proposed change amends the time restriction for emission reductions to allow certain prior shut-downs and curtailments to qualify for offsets.

R18-2-404(J). This proposed change further amends the time restrictions for emission reductions to allow certain prior shutdowns and curtailments to qualify for offsets.

R18-2-1201. Definitions.

R18-2-1202. This Section outlines the sources eligible to participate in the program.

R18-2-1203. This Section outlines the responsibilities of the Director related to the administration of the bank. Upon the certification of emission reduction credits by the permitting authority, the Director issues paper certificates to the generating source to evidence ownership of credits. The registry not only allows for an electronic record of the emission reduction credits, but provides a readily accessible notice of marketable credits.

R18-2-1204. This Section provides detailed information on the process and requirements involved for sources wishing to generate emission reduction credits.

R18-2-1205. This Section outlines how emission reduction credits are certified. Certificates are issued only upon the certification of emission reduction credits. The registry will note the difference between a conditional credit and a certified credit. Subsection (D) provides that banked credits do not expire.

R18-2-1206. This Section provides the source wishing to utilize banked emission reduction credits with the detailed information on the process and requirements for utilization of credits. There are three types of credit utilization: the conventional use as offsets as outlined in this Section, the simple withdrawal of the credits by the generating source, and the permanent retirement of credits through the purchase by a party not intending to use the credits at any future time.

R18-2-1207. This Section establishes the process for withdrawing emission reduction credits.

R18-2-1208. This Section outlines the fees involved in the administration of the bank.

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

None

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

This rule does not diminish any existing authority for ADEQ or Maricopa, Pima, or Pinal counties.

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

Rule Identification

This rule, pertaining to 18 A.A.C. 2, amends Articles 3 and 4 and adds new Sections to Article 12, "Emissions Bank," formerly a reserved Article.

1. Purpose of Rule

This rule will create an emissions bank that acts as a holding place and information center for emission reduction credits from sources. The Arizona Department of Environmental Quality (ADEQ) will administer the bank and post information via an electronic registry. The three objectives of this rule are: (1) To provide information to sources and other interested parties, (2) To establish operating parameters for the bank, and (3) To ensure emission reduction benefits.

A source that generates emission reductions may submit a credit generation application (CGA) to the appropriate permitting authority with an application for a permit revision or permit surrender in the case of a shut down. A source wanting to use emission reduction credits that have already been deposited in the bank must submit a credit utilization application (CUA) to the appropriate permitting authority with an application for a permit revision or a new permit. Additionally, sources must satisfy other relevant rule requirements, such as New Source Review (NSR) or Prevention of Serious Deterioration (PSD) requirements, as applicable.

Sources that emit air pollutants are permitted by ADEQ as well as Maricopa, Pima, and Pinal Counties. Thus, three political subdivisions of the state will be directly affected by this rule because the CGA and CUA are processed as part of the permitting process.

The classes of persons potentially impacted by this rule include: sources that voluntarily decide to participate as either generators or users of emissions credits; emission trading brokers; ADEQ as the implementing agency, bank administrator and permitting authority; Maricopa, Pima, and Pinal Counties as permitting authorities and delegated entities to certify credits; and the general public.

Other classes of persons indirectly impacted could include: consultants, lawyers, accountants, equipment suppliers, and installers of pollution control equipment. However, since this rule merely establishes an emissions bank, the impacts to these latter classes of persons were not evaluated.

2. Benefit-Cost General Overview

As explained earlier in this Notice, ADEQ concluded that the legislature intended the Arizona emissions bank to be voluntary. In addition, ADEQ determined that a voluntary and free market approach would generate more flexibility and efficiency for participants than a mandatory program. A voluntary program also would be less resource-intensive for regulatory agencies as well.

Because of the voluntary nature of this program, there are no program costs to a source unless they choose to deposit emission reduction credits in the Arizona emissions bank or utilize emission reduction credits previously deposited in the Arizona emissions bank. There is no charge for a source to withdraw their own credits from the Arizona emissions bank, or for anyone who permanently retires credits from the bank.

The benefits derived from the creation of a bank are the benefits envisioned by the stakeholders initially requesting the establishment of a bank - increased market exposure of available credits for sellers, and increased exposure of available credits for buyers. Furthermore, relying on the established protocol of the permitting process for certifying the credits prior to deposit assures both the seller and buyer of credit reliability - that an emission reduction credit actually reflects a ton of surplus emission reduction.

ADEQ also expects that without the bank, both large and small sources will expend significant resources inefficiently. For example, in discussions with local businesses who have investigated seeking emission offsets from potential sources, ADEQ discovered that very substantial amounts of monies were expended by these businesses to locate, verify the availability of emission reductions, and negotiate with potential sellers of credits. Thus, the emissions bank should help to alleviate scenarios such as these by providing information to potential sellers of emission credits. Based on the experiences of these local businesses and the many months of time and substantial amounts of money, ADEQ anticipates that the emissions bank will transform the current inefficient market to a much more efficient market and provide cost-saving benefits to sources. In some cases, costs expended by a source without the benefit of an emissions bank could exceed the value of 10 percent credits retired by the bank.

The bank can be viewed as a clearinghouse for emissions credit information. Emission reduction credits could be compared to real estate in which sellers decide whether or not to list their property and become part of a multiple listing service (MLS) "bank" where buyers, seeking information on property for sale, can use the listed information to their benefit. In both cases, the use of a "clearinghouse" reduces transaction costs and promotes economic efficiencies because buyers and sellers can easily find each other by utilizing the bank's information.

Some sources will utilize the bank to "advertise" their reduced emissions while other sources will utilize the bank to find available emission credits for offset requirements or for other needs. In addition, others could use the bank to buy emission credits, thus, retiring them from the market as an air quality improvement measure. The emissions bank creates opportunities for sources of all types and sizes, as well as other entities, to participate.

Opportunities for trading emission reduction credits have existed and thrived for some time throughout the country. Many sources already located or moving to Arizona have expressed the need to take advantage of more of these emission trading opportunities. Furthermore, most of the cost involved in the marketing of emission reduction credits is reduced, particularly for the buyer of credits, through the use of a bank. The bank is beneficial for the buyer because credits are certified and readily available, allowing the buyer to "shop." The bank is beneficial for the seller because credits are widely advertised and have predetermined reliability, equivalent to providing a "warranty." For illustration purposes, the Table below is a cost comparison for sources selling and buying credits with or without a bank.

Arizona Administrative Register
Notices of Final Rulemaking

TABLE - Cost Illustration - Medium-size Sources Generating/Using 20 Credits of NOX

Credit Generation Activity³	Without a Bank	With a Bank
Administrative Fee for banking	None	\$200
Permit Revision Fee ⁴	\$5700	\$5700
Legal and/or Contract Fees (warranty) ⁵	\$15,000	\$500
Place Credit in Marketplace (broker)	\$7000 ⁶	None
Market Credit Directly (time, calls, etc.)	\$5000	None
Total \$\$	\$32,700	\$6400

³ Costs illustrated are approximations and do not reflect the costs of the activities or modification which generated the reduction.

⁴ Permit revision fees can range from \$1500-\$10,000 or higher. For this example, a mid-range cost was chosen; mid-range costs were also used in the other cost categories listed within the Table.

⁵ Legal fees for sources generating credits with a bank are minimal because the only legal paperwork is the CGA. This is in contrast to a transaction without a bank where it may be necessary for a source wanting to see emission reduction credits to have a legal document prepared that provides potential buyers with a guarantee that the reductions are bona fide.

⁶ Broker fees or consultant-broker fees vary widely; 7.5% of final sale plus contract rates is often quoted but represents different services for different brokers or consultants. If no broker or consultant is used to market the credit, the costs in the next category (market credit directly) will increase as sources often spend time and money to market credits on their own in addition to the use of an outside agent.

Credit Utilization Activity	Without a Bank	With a Bank
Administrative Fee for banking	None	\$200
Permit Revisions Fee	\$5700	\$5700
Determine Marketplace Availability of NOX	\$10,000	None
Legal and/or Contract Fees (negotiation)	\$7000	\$7000
Obtain Credits (broker fees)	\$4000 ⁷	\$2000 ⁸
Total \$\$	\$26,700	\$14,900

⁷ The buyer could opt not to use a broker, however, consulting fees would likely rise to cover broker-like services. This cost does not reflect the actual cost of the credits (On 2-5-02, NOX credits averaged \$12,000/ton in Arizona.)

⁸ A buyer utilizing a bank will pay lower broker fees because the emission reduction credits are identified and certified. In this example, a broker is not necessary for the transaction.

According to the laws of supply and demand, the addition of a tax or premium, which increases the cost of a good or service, will generally reduce the quantity consumed because the increase in price causes a decrease in demand. ADEQ expects that even if some sources will trade outside of the bank because of the 10 percent discount, the majority will use the bank for depositing and buying credits because of the flexibility it will provide and the time it will save the sources. Although this program requires credits to be discounted by 10 percent upon deposit, thus ensuring an air quality benefit, ADEQ does not anticipate this to significantly reduce the use of the bank. The 10 percent emission credits retired by the bank reduces the quantity of emission reduction credits available for sale. The potential benefits of the bank could not only offset the value of this cost, but the gain to the environment would be less under a traditional program whereby sources simply installed pollution controls and were not allowed to bank credits.

The convention of applying a 10 percent discount has not negatively affected access to the emissions trading marketplace in other states (see p. 6 for a list of other states), and ADEQ does not believe it will negatively affect access to the marketplace in Arizona. In the scenario outlined in the Table, a reducing source opting not to bank would market the 20 NOX credits, but face additional costs in the marketing of those credits. A reducing source opting to bank the credits would have less than 20 NOX credits available for sale (20 credits discounted by 10 percent equals 18 NOX credits available), but would have the cost benefit of what amounts to free advertising and promotion of the credits, credit assurance for any potential buyers, and increased exposure of the credits to potential buyers because of the bank. The increased pool of buyers and the reduced expenses for the potential buyers could provide an offset for any potential income lost by the reduced amount of banked credits due to the 10 percent discount. In addition, the benefit of credit reliability through the bank greatly reduces a potential buyer's costs to determine reliability of a reduction because the reductions will have already been banked. Without a bank a buyer may be faced with paying to do an

Arizona Administrative Register
Notices of Final Rulemaking

independent verification of a reduction. It is also important to remember that while sources opting to bank credits have less credits available for sale, the up front costs of marketing the credits without a bank could be considerable - assuming the credits are marketed successfully or at all.

In ADEQ's discussions with sources, numerous emissions brokers, as well as members of the Emissions Marketing Association, many have advised the Department of the high costs involved for potential buyers in determining the veracity of a claimed reduction outside of a banking program. They also pointed out the difficulty and expense of locating available credits in a state without a banking program. Many members have advised the Department that the 10 percent discount would have a small impact on sources that may not otherwise be able to trade at all, or otherwise receive optimal market value for their credits.

ADEQ has determined through stakeholder discussions that there is no particular advantage to posting the actual price paid for purchased emission reduction credits. Emission reduction credit prices are highly variable and time sensitive, but general information on prices is available through numerous public venues. For example: Cantor Fitzgerald (www.emissionstrading.com), Prebon Energy (www.prebon.com), and RECLAIM (www.aqmd.gov/reclaim/reclaim.html). For the Arizona emissions bank, specific credit price information may be made available upon the consent of the buyer (and seller if conditions of private transactions so require) by completing an optional section on the Credit Utilization Application. If the parties so desire, the price information can be posted in the comment section of the registry, or would be available through direct consultation with the source's credit information contact, also provided on the registry.

An emissions bank has the potential to reduce pollution because it promotes increased production efficiency and incentives for using the best possible air pollution control devices. Improved air quality leads to better human health. Evidence from time-series studies and population based cross-sectional studies, shows a strong association between measures of mortality and morbidity and air pollution. Thus, reductions in emissions may result in cleaner air and better health for the citizens of this state.

ADEQ cannot establish specific regulatory costs to participate in the emissions bank program because of the voluntary nature of the program. In addition, costs associated with a permit revision or new permit are covered under different rules. For example, a source applying for credits would incur the normal fees associated with a permit revision and internal and external costs, such as consultants, lawyers, and equipment vendors (capital expenditures). Likewise, any revenues received from the sale of credits through the bank would not represent a benefit under this rule. However, the statute has authorized ADEQ to assess an administrative fee for administration of the bank. ADEQ estimates approximately 3 FTE hours to complete data entry, completeness review, data base management, and Web site management. Using the \$66 per hour in R18-2-326, this fee will be \$200 per credit generation application (CGA) or credit utilization application (CUA).

ADEQ anticipates the implementation of the emissions bank to have a positive economic impact on sources, regulatory authorities, and the general public. ADEQ does not anticipate any direct impacts on sources' revenues or payroll expenditures or public and private employment.⁹ Finally, if there are any impacts to state revenues, they will be neutral in that administrative fees are meant to cover the personnel costs to manage the bank's database.

[⁹ Because the impact of sources generating revenues from the sale of emission credits will impact their revenue, payroll, and employment structures in different ways, ADEQ cannot predict the direct impact this rule will have on these structures. Hence, each source will utilize net revenues, if any, in accordance with specific business goals and objectives.]

Impact of changes to R18-2-404(A) and (J)

The changes to these subsections in Arizona's NSR program remove existing time restrictions for emission reductions from certain prior shutdowns and curtailments to qualify for offsets. This will increase the number of emission reductions that will be bankable.

Shutdowns and curtailments (e.g., planned permanent production decreases) are only two of the ways that a source may reduce emissions. Other ways to reduce emissions include the installation or upgrading of pollution control equipment, re-engineering of the process, and changing fuels, feedstock, or raw material. R18-2-404 previously provided that shutdowns or curtailments would qualify (for offsets) only if they occurred after the application for the new source or modification needing the offsets, or, if the new source or modification was a replacement for the reducing source. R18-2-404 was stricter than EPA policy allows. EPA policy allows use of prior shutdowns and curtailments if a state is in compliance with nonattainment planning requirements. (Memorandum to Regional Offices from John Seitz, Director of EPA's OAQPS (July 21, 1993.))

Since this change will increase the kinds of reductions that can be used as offsets, it should tend to encourage these types of reductions, as well as increase the number of these reductions that are certified for deposit in the Arizona emissions bank. It increases flexibility for potential generators of credits, will provide more emission reductions overall, while increasing the number of offset credits available for major sources in nonattainment areas.

3. Small Business Analysis

A.R.S. § 41-1055(B)(5) requires agencies to state the probable impact of a rulemaking on small businesses. A.R.S. § 41-1035 requires agencies to reduce the impact of a rule on small businesses by using certain methods when they are

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

ADEQ expects that small business, especially those businesses electing to sell credits, will participate in the emissions bank as buyers and sellers because of the voluntary nature and flexibility of the program. Thus, the potential for reduced compliance costs, increased revenues, and air quality improvements is expected to act as a catalyst to transform the inefficient market that currently exists to a more efficient one.

Of the universe of sources permitted by ADEQ and the three counties, approximately 900 potentially could participate in the emissions bank as either buyers or sellers. All small businesses can continue to consider buying or selling credits outside the bank. The extra choice of buying or selling credits through the bank is a benefit to these small businesses.

ADEQ has structured the emissions bank to encourage small businesses to participate. All sources that choose to participate must comply with the banking requirements. In developing this program, ADEQ minimized the requirements and built in as much flexibility as possible to encourage participation by all sources, including small businesses. ADEQ was unable to establish different requirements for small businesses.

10. A description of the changes between the proposed rules, including supplemental notices, and final rules:

The following changes were made between the proposed rule and the final rule, and are identified through strikeouts for deleted language and underlines for new language:

ARTICLE 3. PERMITS AND PERMIT REVISIONS

R18-2-330. Public Participation

ARTICLE 4. PERMIT REQUIREMENTS FOR NEW MAJOR SOURCES AND MAJOR MODIFICATIONS TO EXISTING MAJOR SOURCES

R18-2-404. Offset and Net Air Quality Benefit Standards

ARTICLE 12. EMISSIONS BANK

R18-2-1201. Definitions

R18-2-1202. Applicability

R18-2-1203. Emissions Bank Administration

R18-2-1204. Credit Generation

R18-2-1205. Credit Certification

~~R18-2-1206. Credit Terms~~

~~R18-2-1207.~~R18-2-1206. Credit Utilization

~~R18-2-1208.~~R18-2-1207. Credit Retirement or Withdrawal

~~R18-2-1209. Credit Transfer~~

~~R18-2-1210.~~R18-2-1208. Fees

ARTICLE 3. PERMITS AND PERMIT REVISIONS

R18-2-330. Public Participation

A. No change

B. No change

C. No change

D. The notice required by subsection (C) shall include the following:

1. No change

2. No change

3. No change

4. No change

5. No change

6. No change

7. No change

Arizona Administrative Register
Notices of Final Rulemaking

8. No change
 9. No change
 10. No change
 11. No change
 12. The Director shall include a statement in the public notice if the permit or permit revision would result in the generation of emission reduction credits pursuant to ~~under~~ R18-2-1204, or the utilization of emission reduction credits pursuant to ~~under~~ R18-2-1207 R18-2-1206.
- E.** No change
- F.** No change
- G.** No change

**ARTICLE 4. PERMIT REQUIREMENTS FOR NEW MAJOR SOURCES AND
MAJOR MODIFICATIONS TO EXISTING MAJOR SOURCES**

R18-2-404. Offset and Net Air Quality Benefit Standards

No changes were made to this Section between the proposed and final rule.

ARTICLE 12. EMISSIONS BANK

R18-2-1201. Definitions

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

1. "Certified ~~credits~~ credit" means an emission reduction ~~credits~~ credit that ~~have qualified for certification by passing~~ meets the criteria established for emission reduction certification as outlined in ~~under~~ R18-2-1205 of this Article.
2. "Conditional ~~credits~~ credit" means an emission reduction ~~credits~~ credit that ~~are~~ is in the review process ~~prior to~~ before qualifying for certification under R18-2-1205.
3. "Credit generation" means the process by which a source obtains emission reduction credits for eventual listing in the registry.
4. "Credit retirement" means ~~the~~ a person's purchase of a banked emission reduction ~~credits~~ credit for the purpose of permanent removal from the emissions bank.
5. "Credit transfer" means ~~the exchange of banked emission reduction credits for the purpose of transferring ownership of emission reduction credits.~~
- 6.5. "Credit utilization" means the use of a certified emission reduction ~~credits~~ for any purpose credit.
- 7.6. "Credit withdrawal" means the removal of an emission reduction ~~credits~~ credit from the bank by the source originally depositing the emission reduction ~~credits~~ credit.
- 8.7. "Emission reduction credit" or "credit" means a certified unit, ~~awarded through a certification process that may then~~ be banked, sold, transferred, withdrawn, or retired.
9. "Modeling domain" means the area, on a case-by-case basis, analyzed to determine a source's air quality impact.
- 10.8. "Permitting authority" means the state or county ~~agency~~ that has jurisdiction over a source ~~pursuant to~~ under A.R.S. § 49-402 and may review, issue, revise, administer, and enforce a permit; and certify a credit under this Article.
- 11.9. "Registry" means the location where emission reduction credits are ~~listed~~ posted for the purpose of public notice, allowing a person to determine the availability of credits for related market transactions.
- 12.10. "Surplus" means the amount of ~~an~~ a permitted source's emission reduction ~~at a permitted source which that~~ is not required by federal, state, or local law.

R18-2-1202. Applicability

The provisions of this Article ~~shall~~ apply to permitted sources emitting particulate matter, sulfur dioxide, carbon monoxide, nitrogen oxides, or volatile organic compounds. The provisions of this Article shall not apply to sources granted authority to operate under 18 A.A.C. 2, Article 5.

R18-2-1203. Emissions Bank Administration

A. The Director shall place an emission reduction ~~credits~~ credit in the emissions bank credit registry upon conditional certification, certification, pending use, and final disposition. For each credit, the Director shall place in the registry: the registry shall contain the name of the owner(s) and contact person, amount and type of pollutant quali-

Arizona Administrative Register
Notices of Final Rulemaking

filed as an emission reduction credit, the date and type of the registration, and the location and effective date of the emission reduction.

1. Source's contact name and information;
2. Source name and information;
3. Amount and type of pollutant;
4. Date of emission reduction and credit status.

B. The Director shall issue a certificate of deposit to the reducing source for each certified credit awarded and deposited in the bank, and ~~The Director shall~~ issue a certificate of retirement to a person for each certified credit permanently retired.

R18-2-1204. Credit Generation

A. A source wanting to generate ~~emissions~~ an emission reduction credits for deposit into the bank shall submit a Credit Generation Application (CGA) to the Director on a form as prescribed by the Director. The CGA shall contain:

1. The company name;
2. The company mailing address;
3. The owner, co-owner, or partner;
4. The contact person name, title, and telephone number;
5. The permitted source name, location, permit number, and industry code;
6. The pollutant;
7. The attainment status of the area where the source is located;
8. The amount of actual emissions reduced;
9. The date of emission reduction to be credited;
10. The description of emission reduction credit generation activity;
11. The signature of and verification of truthfulness and accuracy by a responsible official as defined in R18- 2-301(17).
12. The name, title, and telephone number of the responsible official.

B. ~~The completed form shall be submitted~~ The source shall submit a copy of the CGA to the permitting authority at the time the source submits with an application for to revise the permit revision or request for to terminate the permit termination. A copy of the completed CGA shall also be submitted to the Director. ~~The CGA form shall contain:~~

1. ~~The company name;~~
2. ~~The company mailing address;~~
3. ~~The owners (co-owners, partners);~~
4. ~~The contact person name;~~
5. ~~The contact person title;~~
6. ~~The contact person telephone number;~~
7. ~~The source name;~~
8. ~~The source location;~~
9. ~~The source description;~~
10. ~~The permit number;~~
11. ~~The pollutant;~~
12. ~~The attainment status of the area where the source is located;~~
13. ~~The amount of emission reduction;~~
14. ~~The date of emission reduction to be credited;~~
15. ~~The description of emission reduction credit generation activity;~~
16. ~~The signature and certification of responsible official;~~
17. ~~The name, title, and telephone number of responsible official.~~

Arizona Administrative Register
Notices of Final Rulemaking

~~C.B.~~ Upon receipt by the Director of a ~~notarized copy of the CGA with a check for the administrative fee specified in R18-2-1208(A), the Director shall list the credits each conditional credit as conditional in the registry.~~

R18-2-1205. Credit Certification

~~A.~~ For credits to be certified: A permitting authority may certify an emission credit if the permitting authority verifies the credit is based on:

~~1.~~ The permitting authority shall verify the following for all credits contained in a CGA:

~~a.1.~~ The emission ~~A~~ reduction in actual emissions that occurred or will occur after August 17, 1999;

~~b.2.~~ The emission ~~A~~ quantifiable reduction in actual emissions is quantifiable;

~~c.3.~~ The emission ~~A~~ permanent reduction in actual emissions is permanent;

~~d.4.~~ The emission ~~An~~ enforceable reduction in actual emissions; is enforceable and

~~e.5.~~ The emission ~~A~~ surplus reduction in actual emissions is a surplus occurring outside of in addition to any other required emission reduction; and

~~f.~~ The permit revision or permit termination is approved by the permitting authority.

~~2.B.~~ The source must notify the permitting authority when the reduction has occurred occurs. As part of the notification, the source shall include the results of any required testing or monitoring along with resulting emission reductions.

~~C.~~ In order for an emission reduction to be quantifiable under this Section:

~~1.~~ The emission reduction must be quantifiable under R18-2-301(14); and

~~2.~~ The reducing source shall submit documentation of any testing or monitoring that demonstrates an emission reduction.

~~3.D.~~ The permitting authority shall grant certify one emission reduction credit for one each ton per year of the permitted amount of particulate matter, sulfur dioxide, carbon monoxide, nitrogen dioxide, or volatile organic compound actually reduced.

~~E.~~ At the time of deposit in the emissions bank, the Director shall discount by 10 percent the certified credit total. The 10 percent of certified credit total shall be permanently retired to the Bank bank.

~~F.~~ A banked credit does not expire.

~~4.~~ The permitting authority shall notify the Director of the denial or granting of certified credits, and the amount granted.

~~B.G.~~ Upon notice by the The permitting authority shall notify the source and the Director that a credits have been granted by a permitting authority credit is certified. Upon receipt of the notice, the Director shall issue a certificate for the each certified credit to the applicant as identified in R18-2-1204, and list the certified credits credit in the registry.

R18-2-1206. Credit Terms

~~Certified credits do not expire.~~

~~R18-2-1207.~~ R18-2-1206. Credit Utilization

~~A.~~ A source wanting to utilize may use a certified emission reduction credit in the same nonattainment area, maintenance area, or modeling domain in which the emission reduction occurred shall submit by submitting a Credit Utilization Application (CUA) to the Director on a form as prescribed by the Director. The CUA shall contain:

~~1.~~ The name and mailing address of the source that generated the credit;

~~2.~~ The owner, co-owner, or partner of the source that generated the credit;

~~3.~~ The contact person name, title, telephone number of the source that generated the credit;

~~4.~~ The name and mailing address of the source utilizing the credit;

~~5.~~ The owner, co-owner, or partner of the source utilizing the credit;

~~6.~~ The contact person name, title, telephone number of the source utilizing the credit;

~~7.~~ The purpose of the utilization;

~~8.~~ The pollutant;

~~9.~~ The amount of emission reduction credit to be utilized;

~~10.~~ Each emission reduction credit certificate number;

~~11.~~ The signature of and verification of truthfulness and accuracy by a responsible official as defined in R18-2-301(17); and

Arizona Administrative Register
Notices of Final Rulemaking

12. The name, title, and telephone number of the responsible official.

~~**B.** The completed form The source shall be submitted submit a copy of the CUA to the permitting authority at the time the source submits an application for a permit or permit revision. A copy of the completed CUA shall also be submitted to the Director. The CUA form shall contain:~~

- ~~1. The credit generating company name and mailing address;~~
- ~~2. The owners (co-owners; partners);~~
- ~~3. The contact person name;~~
- ~~4. The contact person title;~~
- ~~5. The contact person telephone number;~~
- ~~6. The credit utilizing company name and mailing address;~~
- ~~7. The contact person name;~~
- ~~8. The contact person title;~~
- ~~9. The contact person telephone number;~~
- ~~10. The pollutant;~~
- ~~11. The number of emission reduction credits utilized;~~
- ~~12. The emission reduction credit certificate number(s);~~
- ~~13. The signature and certification of responsible official;~~
- ~~14. The name, title, and telephone number of responsible official.~~

~~**CB.** Upon receipt by the Director of a notarized copy of the CUA with a check for the administrative fee specified in R18-2-1208(B), the Director shall list the pending sale in the registry.~~

~~**DC.** For credits to be released from the emissions bank for a permit action, the permitting authority shall have received the certified credit certificates from the applicant and verified their authenticity with the emissions bank before granting or denying the permit or permit revision. The Director shall not list the final sale in the registry until:~~

- ~~1. The permitting authority evaluates and verifies the authenticity of the credit with the emissions bank;~~
- ~~2. The permitting authority determines that there will be no adverse impact on air quality; and~~
- ~~3. The permitting authority completes the permitting action and submits the credit certificate to the Director.~~

~~**E.** The permitting authority shall notify the Director upon issuance of permits or permit revisions utilizing certified emissions reduction credits, and submit the certificates for the utilized credits to the Director by certified mail.~~

~~**FD.** Upon receipt of notice and surrendered certificates, After the permitting authority notifies the Director that the requirements of this Section have been met, the Director shall delist the credits in the registry.~~

~~R18-2-1208~~ R18-2-1207. Credit Retirement or Withdrawal

Any party purchasing certified credits listed in the emissions bank for the purpose of credit retirement, or any source withdrawing its own credits from the emissions bank, shall submit a CUA specified in R18-2-1204(A) with the surrender surrendered certificates to the Director. Upon receipt ~~by certified mail of a notice of intent to retire or withdraw the emission reduction credits along with the surrendered certificates~~ of the CUA and surrendered certificates, the Director shall delist the credits in the registry.

~~R18-2-1209. Credit Transfer~~

~~**A.** A source wanting to transfer ownership of credits shall submit a Credit Transfer Application (CTA) as prescribed by the Director.~~

~~**B.** A notarized copy of the CTA with a check for the administrative fee shall be submitted to the Director with the certificates to the Director. The CTA shall contain:~~

- ~~1. The company name;~~
- ~~2. The company mailing address;~~
- ~~3. The owners (co-owners, partners);~~
- ~~4. The contact person name;~~
- ~~5. The contact person title;~~
- ~~6. The contact person telephone number;~~
- ~~7. The source name;~~

Arizona Administrative Register
Notices of Final Rulemaking

8. ~~The source location;~~
9. ~~The source description;~~
10. ~~The emission credit reduction certificate number(s);~~
11. ~~The new owner information;~~
12. ~~The effective date of transfer;~~
13. ~~The signature and certification of responsible official;~~
14. ~~The name, title, and telephone number of responsible official.~~

~~C. Upon receipt of the surrendered certificate, the Director shall issue and distribute new certificates for each credit to the new owner(s), and list the new owner(s) information in the registry.~~

~~R18-2-1210 R18-2-1208. Fees~~

~~A. The A source generating credits a credit shall pay a non-refundable administrative fee of \$200.00 to the Director upon submittal of when submitting the CGA to the Director. This fee shall be is in addition to the fees outlined specified in R18-2-326.~~

~~B. The A source utilizing credits a credit shall pay a non-refundable administrative fee of \$200.00 to the Director upon submittal of when submitting the CUA to the Director. This fee shall be is in addition to the fees outlined specified in R18-2-326.~~

~~C. A source transferring ownership of credits shall pay a non-refundable administrative fee of \$50.00, upon submittal of the CTA to the Director.~~

~~DC. An administrative fee will The Director shall not be assessed assess an administrative fee to a party person:~~

1. ~~purchasing credits Purchasing a credit~~ for retirement;
2. ~~or a source amending Amending~~ ownership information contained in the registry; or
3. Withdrawing a credit from the bank.

Although some of the above changes were made in response to comments (see part 11 of the Notice of Final Rulemaking), the majority of the changes to the proposed rule were made by ADEQ in cooperation with G.R.R.C. staff to improve the clarity, conciseness, and understanding of the rule.

Among the changes made to improve the clarity, conciseness, and understandability of the rule was the elimination of a separate Section on credit transfers. Requirements related to credit transfers remain in the rule, but are contained in the Section on credit withdrawals. Similarly, the separate Section on credit terms has been deleted in favor of a clarified statement on credit terms now at R18-2-1204(D).

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

The Arizona Department of Environmental Quality, Air Quality Division, received written comments from four interested parties regarding the proposed Emissions Bank rule. The original public comment period was from June 8, 2001, to July 18, 2001. At the public hearing held July 11, 2001, there was a request to extend the comment period until a written review of the proceedings could be made available. The public comment period was then extended to August 17, 2001.

Comment #1: The majority of commenters stressed the need to clarify that only reductions in actual emissions versus allowable emissions would be certified for emission reduction credits. One commenter wanted further clarification that government would retain the right to establish further limits on allowable emissions without compensation.

Response #1: Rule language in Sections R18-2-1204(B)(13) and R18-2-1205(A)(1), subsections (a) through (e) have been amended to include the term “actual” to clarify the only type of emissions qualifying for emission reduction credit certification. Because only actual emission reductions can be certified for emission reduction credit, there is no compensation for changes in allowable emissions.

Comment #2: One commenter stated the rule will, “specifically violate Title VI of the Civil Rights Act of 1964 and the Environmental Protection Agency’s (EPA) implementing regulation, 40 C.F.R. § 7.35, by discriminating on the basis of race in issuing permits and significant permit revisions and/or otherwise modifying Title V permits.” Environmental injustice is implicated by the permit revisions required for the generation or utilization of emission reduction credits.

Response #2: Situations such as those cited by the commenter most often arise as part of the local zoning process. Such siting decisions are based on land use requirements and local land use planning. The emissions bank is only a repository for credits, and has no bearing on industrial source siting decisions by local governments.

Comment #3: Another commenter raised the environmental justice issues and thought the rule should contain language that would prohibit the concentration of pollutants in specific areas.

Arizona Administrative Register
Notices of Final Rulemaking

Response #3: Concentrations of pollutants in a specific area are controlled by permitting decisions that are based on technology and health-based standards. In addition, as stated in #2, the emissions bank is not involved in any permitting decisions.

Comment #4: One commenter stated the health implications regarding offsets for particulate matter measuring 2.5 microns or less (PM 2.5) was not included.

Response #4: Only criteria pollutants at the time of this rulemaking can be considered for emission reduction credits. The criteria pollutants listed in A.R.S. § 49-410 and repeated in R18-2-1202, include particulate matter, of which PM 2.5 is a subset.

Comment #5: Two commenters stated a shared concern that sources could “double-count” reductions already credited in state implementation plans (SIPs), fraudulently claim or use credits, violate the NAAQS, etc. These “bad actors” should have their impact on area health reviewed, the public notified of their actions, and their participation in the program precluded or their actions penalized.

Response #5: Because SIPs require an emissions inventory that accounts for contemporary or projected shutdowns or operational curtailments, any emission reductions credited to a SIP from such activities cannot be available for certification and deposit in the Bank. A.R.S. § 49-410(B) and R18-2-1205(A)(1)(e) in the rule, require all emission reductions to be surplus. Surplus is defined in R18-2-1201(12) as, “an emission reduction at a permitted source that is not required by federal, state, or local law.” Other scenarios, such as the “bad actors,” mentioned by the commentator, are also unlikely because once certified, the emission reductions become part of a permanent record in the form of an enforceable permit condition.

Comment #6: A commenter stated there should be a restriction on the ability to transfer emission reduction credits between “bad actors.”

Response #6: Both generators and users of emissions credits must be permitted sources subject to the enforcement powers set forth in Arizona’s air pollution control statutes. These enforcement powers include the production of records, orders of abatement, injunctive relief, civil penalties up to \$10,000 per day per violation, and criminal penalties. See A.R.S. §§ 49-460 through 49-464; 49-510 through 49-514. These provisions serve as a significant deterrence to “bad actors.” The statute authorizing establishment of the Arizona emissions bank does not include additional enforcement provisions. ADEQ does not believe additional enforcement provisions are necessary in this rule.

Comment #7: Two commenters stated that there should be more information in the public notice regarding permits or permit revisions involving emission reduction credits.

Response #7: There is an established public process for all permits that includes a mechanism for obtaining information about the proposed permit and emission reduction credits.

Comment #8: One commenter stated that, “The proposed rule appears to envision that emissions reductions occurring through voluntary early compliance with pending new, more stringent standards resulting from the adoption of new laws or regulations will qualify for credits.” No credits should be allowed unless they are achieved “significantly in advance” of the effective date of new standards.

Response #8: Any emission reductions a facility must make to comply with a final rulemaking that establishes more stringent standards are not considered to be surplus and, therefore, not allowed as emission reduction credits.

Comment #9: One commenter stated a measurement and monitoring system has not been established to quantify reductions.

Response #9: Emission reductions are only creditable once quantified through source testing, with enforceable conditions in the permit reflecting the reductions.

Comment #10: One commenter stated the definition of modeling domain is too vague and arbitrary, implying the ability to trade outside nonattainment area borders. A second commenter also stated the need to prohibit the use of credits in differing areas.

Response #10: Any modeling domain would be established on a case-by-case basis as part of the permitting process that allows utilization of credits in the bank. In addition, to authorize the utilization of credits, the permitting authority must, among other things, ensure there is no negative impact on air quality. Because it is part of this permitting process, and not the banking of a credit, it is not necessary for the bank rule to define this term. Therefore, “modeling domain” has been removed from the definitions in R18-2-1201. In addition, the permitting authority must determine that there is an air quality benefit as reflected in the statutory language in A.R.S. § 49-410, “The credit may be used, traded, sold or otherwise expended within the same nonattainment area, maintenance area or modeling domain in which the emissions reduction occurred, only if there will be no adverse impact on air quality.” The rule has been amended at R18-2-1206(A) to clarify this issue.

Comment #11: One commenter stated that the term, “permanent” needs to be defined.

Response #11: The commenter did not expand on why the common usage of the term “permanent” is not clear. However, permanent generally means reductions are not transient. As no other similar comments were received, ADEQ believes that the rule is sufficiently clear.

Arizona Administrative Register
Notices of Final Rulemaking

Comment #12: Two commenters stated that credit terms need to have an express time limit.

Response #12: R18-2-1205(D) provides that “a banked credit does not expire”. This statement clarifies that the Bank rules do not limit how long a credit may remain in the bank. As further explained in the preamble, other laws, such as the federal New Source Review regulations, affect how long a credit may be useful. To maximize the potential value of the credits, these rules do not impose additional restrictions on the life (term) of banked credits but rather, let the marketplace determine usefulness. New Source Review regulations involving the application of certified credits for offsets will affect a credit’s usefulness as part of the permitting process.

Comment #13: Two commenters stated credits should not be certifiable until the Bank is fully functional. Credit from shutdowns or curtailments after August 17, 1999, should not be allowed; only future shutdowns or curtailments may obtain emission reduction credits.

Response #13: Certification of credits will not occur until the Bank is in place. A.R.S. § 49-410(B), however, states, “...the reduction in emissions shall be permanent, quantifiable and otherwise enforceable and shall occur after the effective date of this Section.” The effective date of the legislation was August 17, 1999. Changes to R18-2-404(A) and R18-2-404(J) amend the time restriction for emission reductions to allow certain prior shutdowns and curtailments to qualify for offsets; however, for deposit in the Bank, these reductions in emissions must occur after August 17, 1999, the statute’s effective date. Further, ADEQ is obligated to comply with the statute.

Comment #14: One commenter stated interpollutant trading and mobile source trading should be prohibited.

Response #14: Mobile sources are not permitted sources; therefore, this rulemaking does not apply to mobile sources. At this time, there is no mechanism exists in state law for trading one pollutant for another. Further, interpollutant trading is prohibited under the federal NSR and Prevention of Serious Deterioration (PSD) programs.

Comment #15: One commenter stated that, “the government [must] retain the right to further limit allowable releases,” and that the rule needs to be very clear that credits are not a property right, and there is no “right to pollute.”

Response #15: ADEQ’s authority to limit allowable releases is contained in A.R.S. § 49-426. This rule does not alter that authority. Additionally, property rights of credits, if any, exist outside the authority of this rule.

Comment #16: One commenter stated that the administrative fees, R18-2-1210, are too low to properly administer the Bank.

Response #16: A.R.S. § 49-410(D) states, “...shall set a fee that does not discourage the banking of emissions credit.” The administrative fees as listed are expected to cover all necessary activities.

Comment #17: One commenter stated that fines/fine amounts for related violations or fraud should be stated directly within the rule.

Response #17: Permit compliance is covered by a separate set of rules and policy, enacted by a recognized permit violation, with existing penalties available. For air quality permits issued by ADEQ, Article 3 of the Arizona Administrative Code as well as various Arizona Revised Statutes, such as A.R.S. §§ 49-463 and 464, cover some of the related regulations.

Comment #18: One commenter stated the rule did not appear to meet the requirements of A.R.S. § 49-410.

Response #18: The commenter did not specify how the rule fails to meet statutory requirements. ADEQ believes the rule, developed with stakeholders input from numerous sectors, does meet the intent of the enabling statute.

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

Not applicable

13. Incorporation by reference and their location in the rules:

Not applicable

14. Was the rule previously adopted as an emergency rule?

No

15. The full text of the rule follows:

TITLE 18. ENVIRONMENTAL QUALITY

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

ARTICLE 3. PERMITS AND PERMIT REVISIONS

Section
R18-2-330. Public Participation

ARTICLE 4. PERMIT REQUIREMENTS FOR NEW MAJOR SOURCES AND MAJOR MODIFICATIONS TO EXISTING MAJOR SOURCES

Section

R18-2-404. Offset and Net Air Quality Benefit Standards

ARTICLE 12. ~~RESERVED~~ EMISSIONS BANK

Section

R18-2-1201. Definitions

R18-2-1202. Applicability

R18-2-1203. Emissions Bank Administration

R18-2-1204. Credit Generation

R18-2-1205. Credit Certification

R18-2-1206. Credit Utilization

R18-2-1207. Credit Withdrawal

R18-2-1208. Fees

ARTICLE 3. PERMITS AND PERMIT REVISIONS

R18-2-330. Public Participation

- A. No change
 - 1. No change
 - 2. No change
 - 3. No change
 - 4. No change
 - 5. No change
- B. No change
- C. No change
 - 1. No change
 - 2. No change
- D. The notice required by subsection (C) shall include the following:
 - 1. No change
 - 2. No change
 - 3. No change
 - 4. No change
 - 5. No change
 - 6. No change
 - 7. No change
 - 8. No change
 - 9. No change
 - 10. No change
 - 11. No change
 - 12. The Director shall include a statement in the public notice if the permit or permit revision would result in the generation of emission reduction credits under R18-2-1204, or the utilization of emission reduction credits under R18-2-1206.
- E. No change
- F. No change
- G. No change

ARTICLE 4. PERMIT REQUIREMENTS FOR NEW MAJOR SOURCES AND MAJOR MODIFICATIONS TO EXISTING MAJOR SOURCES

R18-2-404. Offset and Net Air Quality Benefit Standards

- A. Increased emissions by a major source or major modification subject to this Article shall be offset by reductions in the emissions of each pollutant for which the area has been designated as nonattainment and for which the source or modification is classified as major. The offset may be obtained by reductions in emissions from the source or modification or from any other source in ~~existence within~~ the allowable offset area, ~~on the startup date of the new major source or major modification.~~ Credit for an emissions offset can be used only if it has not been relied upon in demonstrating attainment or reasonable further progress and if it has not been relied upon previously in issuing a permit or permit revision under this Article under R18-2-402 and R18-2-403 or is not otherwise required under this Chapter or under any provision of the SIP.
- B. No change
 - 1. No change

Arizona Administrative Register
Notices of Final Rulemaking

- 2. No change
- 3. No change
- 4. No change
- C. No change
- D. No change
- E. No change
- F. No change
 - 1. No change
 - 2. No change
- G. No change
 - 1. No change
 - a. No change
 - b. No change
 - 2. No change
- H. No change
 - 1. No change
 - 2. No change
- I. No change
- J. Emissions reductions achieved by shutting down an existing source or permanently curtailing production or operating hours below baseline levels may be credited, if the work force to be affected has been notified of the proposed shutdown or curtailment. No offset credit for shutdowns or curtailments shall be provided for emissions reductions that are necessary to bring a source into compliance with RACT or any other standard under an applicable implementation plan. ~~Source shutdowns and curtailments in production or operating hours occurring before the date the new major source or major modification application is filed shall not be used for emissions offset credit except as follows: if an applicant can establish that it shutdown or curtailed production after August 7, 1977, or less than 1 year before the date of application for the permit or permit revision under this Article, whichever is earlier, and the proposed new major source or major modification is a replacement for the shutdown or curtailment, then credit for the shutdown or curtailment may be applied to offset emissions from the new source or modification.~~
- K. No change
- L. No change
 - 1. No change
 - 2. No change

ARTICLE 12. ~~RESERVED~~ EMISSIONS BANK

R18-2-1201. Definitions

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

- 1. “Certified credit” means an emission reduction credit that meets the criteria under R18-2-1205.
- 2. “Conditional credit” means an emission reduction credit that is in the review process before qualifying for certification under R18-2-1205.
- 3. “Credit generation” means the process by which a source obtains emission reduction credits for eventual listing in the registry.
- 4. “Credit retirement” means a person’s purchase of a banked emission reduction credit for the purpose of permanent removal from the emissions bank.
- 5. “Credit utilization” means the use of a certified emission reduction credit.
- 6. “Credit withdrawal” means the removal of an emission reduction credit from the bank by the source originally depositing the emission reduction credit.
- 7. “Emission reduction credit” or “credit” means a certified unit that may be banked, sold, transferred, withdrawn, or retired.
- 8. “Permitting authority” means the state or county that has jurisdiction over a source under A.R.S. § 49-402 and may review, issue, revise, administer, and enforce a permit; and certify a credit under this Article.
- 9. “Registry” means the location where emission reduction credits are posted for the purpose of public notice, allowing a person to determine the availability of credits for related market transactions.
- 10. “Surplus” means the amount of a permitted source’s emission reduction that is not required by federal, state, or local law.

R18-2-1202. Applicability

The provisions of this Article apply to permitted sources emitting particulate matter, sulfur dioxide, carbon monoxide, nitrogen oxides, or volatile organic compounds. The provisions of this Article shall not apply to sources granted authority to operate under 18 A.A.C. 2, Article 5.

Arizona Administrative Register
Notices of Final Rulemaking

R18-2-1203. Emissions Bank Administration

- A.** The Director shall place an emission reduction credit in the emissions bank credit registry upon conditional certification, certification, pending use, and final disposition. For each credit, the Director shall place in the registry:
1. Source's contact name and information;
 2. Source name and information;
 3. Amount and type of pollutant;
 4. Date of emission reduction and credit status.
- B.** The Director shall issue a certificate of deposit to the reducing source for each certified credit deposited in the bank, and issue a certificate of retirement to a person for each certified credit permanently retired.

R18-2-1204. Credit Generation

- A.** A source wanting to generate an emission reduction for deposit into the bank shall submit a Credit Generation Application (CGA) to the Director on a form prescribed by the Director. The CGA shall contain:
1. The company name;
 2. The company mailing address;
 3. The owner, co-owner, or partner;
 4. The contact person name, title, and telephone number;
 5. The permitted source name, location, permit number, and industry code;
 6. The pollutant;
 7. The attainment status of the area where the source is located;
 8. The amount of actual emissions reduced;
 9. The date of emission reduction to be credited;
 10. The description of emission reduction credit generation activity;
 11. The signature of and verification of truthfulness and accuracy by a responsible official as defined in R18-2-301(17);
 12. The name, title, and telephone number of the responsible official.
- The source shall submit a copy of the CGA to the permitting authority with an application to revise the permit or request to terminate the permit.
- B.** Upon receipt by the Director of the CGA with a check for the administrative fee specified in R18-2-1208(A), the Director shall list each conditional credit in the registry.

R18-2-1205. Credit Certification

- A.** A permitting authority may certify an emission credit if the permitting authority verifies the credit is based on:
1. A reduction in actual emissions that occurred after August 17, 1999;
 2. A quantifiable reduction in actual emissions;
 3. A permanent reduction in actual emissions;
 4. An enforceable reduction in actual emissions; and
 5. A surplus reduction in actual emissions occurring in addition to any other required emission reduction.
- B.** The source must notify the permitting authority when the reduction occurs.
- C.** In order for an emission reduction to be quantifiable under this Section:
1. The emission reduction must be quantifiable under R18-2-301(14); and
 2. The reducing source shall submit documentation of any testing or monitoring that demonstrates an emission reduction.
- D.** The permitting authority shall certify one emission reduction credit for each ton per year of particulate matter, sulfur dioxide, carbon monoxide, nitrogen dioxide, or volatile organic compound actually reduced.
- E.** At the time of deposit in the emissions bank, the Director shall discount by 10 percent the certified credit total. The 10 percent of certified credit total shall be permanently retired to the bank.
- F.** A banked credit does not expire.
- G.** The permitting authority shall notify the source and the Director that a credit is certified. Upon receipt of the notice, the Director shall issue a certificate for each certified credit to the applicant identified in R18-2-1204, and list the certified credit in the registry.

R18-2-1206. Credit Utilization

- A.** A source may use a certified emission reduction credit in the same nonattainment area, maintenance area, or modeling domain in which the emission reduction occurred by submitting a Credit Utilization Application (CUA) to the Director on a form prescribed by the Director. The CUA shall contain:
1. The name and mailing address of the source that generated the credit;
 2. The owner, co-owner, or partner of the source that generated the credit;
 3. The contact person name, title, telephone number of the source that generated the credit;
 4. The name and mailing address of the source utilizing the credit;
 5. The owner, co-owner, or partner of the source utilizing the credit;
 6. The contact person name, title, telephone number of the source utilizing the credit;

Arizona Administrative Register
Notices of Final Rulemaking

7. The purpose of the utilization;
8. The pollutant;
9. The amount of emission reduction credit to be utilized;
10. Each emission reduction credit certificate number;
11. The signature of and verification of truthfulness and accuracy by a responsible official as defined in R18-2-301(17);
and
12. The name, title, and telephone number of the responsible official.

The source shall submit a copy of the CUA to the permitting authority at the time the source submits an application for a permit or permit revision.

- B.** Upon receipt by the Director of the CUA with a check for the administrative fee specified in R18-2-1208(B), the Director shall list the pending sale in the registry.
- C.** The Director shall not list the final sale in the registry until:
 1. The permitting authority evaluates and verifies the authenticity of the credit with the emissions bank;
 2. The permitting authority determines that there will be no adverse impact on air quality; and
 3. The permitting authority completes the permitting action and submits the credit certificate to the Director.
- D.** After the permitting authority notifies the Director that the requirements of this Section have been met, the Director shall delist the credits in the registry.

R18-2-1207. Credit Withdrawal

Any party purchasing certified credits listed in the emissions bank for the purpose of credit retirement, or any source withdrawing its own credits from the emissions bank, shall submit a CUA specified in R18-2-1204(A) with the surrendered certificates to the Director. Upon receipt of the CUA and surrendered certificates, the Director shall delist the credits in the registry.

R18-2-1208. Fees

- A.** A source generating a credit shall pay a non-refundable administrative fee of \$200.00 to the Director when submitting the CGA. This fee is in addition to the fees specified in R18-2-326.
- B.** A source utilizing a credit shall pay a non-refundable administrative fee of \$200.00 to the Director when submitting the CUA. This fee is in addition to the fees specified in R18-2-326.
- C.** The Director shall not assess an administrative fee to a person:
 1. Purchasing a credit for retirement;
 2. Amending ownership information contained in the registry; or
 3. Withdrawing a credit from the bank.