

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 3. AGRICULTURE

CHAPTER 4. DEPARTMENT OF AGRICULTURE PLANT SERVICES DIVISION

PREAMBLE

- | | |
|------------------------------------|---------------------------------|
| 1. <u>Sections Affected</u> | <u>Rulemaking Action</u> |
| R3-4-406 | Amend |
- 2. The statutory authority for the rulemaking, including both the authorizing statute (general) and the statutes the rule is implementing (specific):**
Authorizing statutes: A.R.S. §§ 3-107(A)(1) and 3-232(A)(2)
Implementing statute: A.R.S. § 3-232
- 3. The effective date of the rule:**
May 31, 2003
- 4. A list of all previous notices appearing in the Register addressing the proposed rule:**
Notice of Rulemaking Docket Opening: 8 A.A.R. 2112, May 10, 2002
Notice of Proposed Rulemaking: 9 A.A.R. 4, January 3, 2003
- 5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
- | | |
|------------|---|
| Name: | Sherry D. Blatner, Rules Analyst |
| Address: | Arizona Department of Agriculture
1688 W. Adams, Room 235
Phoenix, AZ 85007 |
| Telephone: | (602) 542-0962 |
| Fax: | (602) 542-5420 |
| E-mail: | sherry.blatner@agric.state.az.us |
- 6. An explanation of the rule, including the agency's reasons for initiating the rule:**
This rulemaking updates material incorporated by reference, deletes language that merely paraphrases incorporated material, and conforms language to the current rulewriting standards of the Office of the Secretary of State. The amendment was a commitment made by the Division to the Council in its last five-year review.
- 7. A reference to any study relevant to the rule that the agency reviewed and either relied on in its evaluation of or justification for the rule or did not rely on in its evaluation of or justification for the rule, where the public may obtain or review each study, all data underlying each study, and any analysis of each study and other supporting material:**
None
- 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:**
- A. *The Arizona Department of Agriculture.*
The Department will incur modest expenses related to training staff and educating the regulated community on the amendments.

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B. *Political Subdivision.*

Other than the Department, no political subdivision is affected by this rulemaking.

C. *Businesses Directly Affected by the Rulemaking.*

Seed dealers will benefit from the Department sampling seed by means of the most current federal and nationally recognized standards.

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

R3-4-403, Noxious Weed Seeds, has been deleted from the final rulemaking.

Minor technical and grammatical changes have been made to R3-4-406 based on suggestions from Department and G.R.R.C. staff.

11. A summary of the comments made regarding the rule and the agency response to them:

No persons other than Department staff attended the oral proceeding held on February 7, 2003. The Department did not receive any written comments regarding the rulemaking.

The Arizona Department of Agriculture's Advisory Council supports the rulemaking.

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

None

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

7 C.F.R. 201.39 through 201.65, amended January 1, 2002, R3-4-406(A)

Rules for Testing Seeds, published by the Association of Official Seed Analysts, effective October 1, 2001, R3-4-406(A)

14. Was this rule previously made as an emergency rule?

No

15. The full text of the rule follows:

TITLE 3. AGRICULTURE

CHAPTER 4. DEPARTMENT OF AGRICULTURE
PLANT SERVICES DIVISION

ARTICLE 4. SEEDS

Section

R3-4-406. Sampling and Analyzing Seed

ARTICLE 4. SEEDS

R3-4-406. Sampling and Analyzing Seed

- A. The methods of taking, handling, analyzing, and testing samples of seed and the tolerances and methods of determination are ~~set forth~~ prescribed in the Federal Seed Act Regulations, 7 CFR ~~201.44~~ 201.39 through ~~201.66~~ 201.65, amended January ~~13, 1995~~ 1, 2002, and in the *Rules for Testing Seeds*, ~~Volume 16, Number 3~~, published by the Association of Official Seed Analysts, effective October 1, ~~1993~~ 2001. This material is incorporated by reference, ~~and is on file with the Department and the Office of the Secretary of State,~~ and does not include any later amendments or editions ~~of the incorporated matter.~~ The CFR may be ordered from the Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA, 15250-7954 and the *Rules for Testing Seeds* may be ordered from the AOSA Management Office, PMB 411, 1763 E. University Blvd., Suite A, Las Cruces, NM, 88001. If there is a conflict between the two documents, the requirements in CFR will prevail.
- B. ~~The~~ A dealer offering ~~the~~ a seed for sale shall ~~bear the expense~~ pay the cost of original germination and purity tests on each lot of seed offered for sale, ~~as well as~~ and any subsequent germination ~~tests~~ test required by A.R.S. § 3-237. The Department shall ~~bear the expense~~ pay the cost of testing seed samples drawn by a seed inspector from lots bearing valid labels.
- C. ~~General sampling procedures.~~
1. ~~All parts of a lot or quantity of seed shall be accessible for sampling.~~
 2. ~~Equal portions shall be taken from evenly distributed parts of the quantity of seed to be sampled.~~
 3. ~~A probe or trier shall be used to sample free-flowing seed in bags or bulk. The probe or trier shall be long enough to sample all portions of a bag containing free-flowing seed.~~
 4. ~~Nonfree-flowing seed which is difficult to sample with a probe or trier shall be sampled by thrusting the hand into the bulk and withdrawing representative portions.~~

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- 5. Each portion of seed shall be examined as it is sampled. If there appears to be lack of uniformity of seed in the sampled portion, additional samples shall be taken to determine if there is a lack of uniformity.
- D.** Bulk seeds or screenings shall be sampled by inserting a long probe or thrusting the hand into the bulk in at least 7 uniformly distributed parts of the quantity being sampled. At least as many trierfuls or handfuls shall be taken as the minimum which would be required for the same quantity of seed or screenings in bags of a size customarily used for such seed or screenings.
- E.** Sampling seed packaged in bags.
 - 1. Each bag shall be sampled in a lot of 6 bags or less. A total of at least 5 trierfuls shall be taken.
 - 2. Five bags plus at least 10% of the number of bags in the lot shall be sampled for lots of more than 6 bags. Regardless of the lot size, no more than 30 bags shall be sampled.
 - 3. Samples shall be drawn from unopened bags, unless the identity of the seed has been preserved.
 - 4. If seed required to be sampled is packaged in small containers which make it impractical to use the procedures set forth in subsections (E)(1) and (2), a portion of 1 unopened container or 1 or more entire unopened containers may be taken to supply the minimum size sample as set forth in subsection (F).
- F.** Sample size.
 - 1. The minimum weights of seed samples required to be submitted for analysis test or examination shall be as follows:
 - a. Two ounces (57 grams) of grass seed not otherwise mentioned, white or alsike clover, or seeds of similar or smaller size;
 - b. Five ounces (142 grams) of red or crimson clover, alfalfa, lespedezas, rye grasses, bromegrass, millet, flax, rape, or seeds of similar size;
 - c. One pound (454 grams) of Sudangrass, proso millet, hemp, or seeds of similar size;
 - d. Two pounds (907 grams) of cereals, sorghum, vetch, or seeds of similar or larger size;
 - e. Two quarts (2.2 liters) of screenings;
 - f. Coated seed for a purity analysis shall consist of at least 7,500 seed units. Coated seed for noxious weed seed examination shall consist of at least 30,000 seed units. Coated seed for germination test only shall consist of at least 1,000 seed units.
 - 2. A sample consisting of a minimum of 400 seeds is required for germination tests of vegetable seeds packaged in containers other than packets. Weights required for purity analysis of such vegetable seeds are set forth in 7 CFR 201.46 and in the *Rules for Testing Seeds* which are both incorporated by reference in subsection (A).

NOTICE OF FINAL RULEMAKING

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 19. BOARD OF NURSING

PREAMBLE

1. Sections Affected

R4-19-601
R4-19-601
R4-19-602
R4-19-602
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R4-19-614
R4-19-615

Rulemaking Action

Renumber
Amend
Renumber
New Section
Renumber
Amend
Renumber
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R4-19-701	Amend
R4-19-702	Amend
R4-19-703	Repeal
R4-19-703	Renumber
R4-19-703	Amend
R4-19-704	Renumber
R4-19-704	Amend
R4-19-705	Renumber
R4-19-705	Amend
R4-19-706	Renumber

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

Authorizing statutes: A.R.S. §§ 32-1606(A)(1) and 32-1606(B)(9)

Implementing statutes: A.R.S. §§ 32-1664, 32-1665, 39-121.01, 41-1001, 41-1023, 41-1033, 41-1056, 41-1091, and 41-1092 to 41-1092.12

3. The effective date of the rules:

June 3, 2003

4. A list of all previous notices appearing in the Register addressing the final rules:

Notice of Rulemaking Docket Opening: 8 A.A.R. 2969, July 19, 2002

Notice of Proposed Rulemaking: 8 A.A.R. 2930, July 19, 2002

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

Name: Pamela Randolph
Nurse Practice Consultant

Address: Arizona State Board of Nursing
1651 E. Morten, Suite 210
Phoenix, AZ 85020

Telephone: (602) 331-8111, ext. 139

Fax: (602) 906-9365

E-mail: prandolph@azbn.org

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

The Board of Nursing is initiating rulemaking on 4 A.A.C. 19, Articles 6 and 7 to comply with the recommendations in the Board's last five-year review approved by the Governor's Regulatory Review Council on February 5, 2002. The Board identified several rules that are inconsistent with the Administrative Procedure Act and others that are redundant. This rulemaking will conform the rules to the APA, eliminate redundancy, and clarify the rules.

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

None

8. 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

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

The Board does not anticipate that this rule package will have a direct economic impact to any entity of government or the public. The public will benefit by having rules of procedure that are consistent with the Administrative Procedure Act and clear processes for public participation in regulation. This will result in less confusion for the regulated community and the public.

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

Various technical and grammatical changes were made at the suggestion of Council staff to improve clarity of the rules. R4-19-601 was revised at the suggestion of Council staff to reflect statutory requirements more accurately. R4-19-602 was revised to clarify that a letter of concern would not be an appealable agency action and the section on notifying individuals of a denial of hearing was eliminated since the Board only denies hearings if the hearing is requested on an action that is not appealable such as a letter of concern.

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

An oral proceeding was held on August 23, 2002 at the Board offices. Four persons attended the hearing and none offered comment on the rule. No written comments were received.

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

None

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

Not applicable

14. Were these rules previously made as emergency rules?

The rule was not previously made as an emergency rule.

15. The full text of the rules follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 19. BOARD OF NURSING

ARTICLE 6. RULES OF PRACTICE AND PROCEDURE

Section

R4-19-601.	Expired	
R4-19-602.	R4-19-601.	Initiation of a Hearing <u>Administrative Hearings</u>
R4-19-603.	R4-19-602.	Denial of Request for Hearing <u>Letter of Concern</u>
R4-19-604.	R4-19-603.	Representation
R4-19-605.	R4-19-604.	Notice of Hearing; <u>Response</u>
R4-19-606.	R4-19-605.	Filing; <u>Computation of Time;</u> Extension of Time <u>Docket</u>
R4-19-607.	R4-19-606.	Record of Hearings
R4-19-612.	R4-19-607.	Recommended Decision
R4-19-608.	Expired	
R4-19-614.	R4-19-608.	Rehearing or Review of Decision
R4-19-609.	Expired	
R4-19-615.	R4-19-609.	Effectiveness of Orders
R4-19-612.	<u>Renumbered</u>	
R4-19-614.	<u>Renumbered</u>	
R4-19-615.	<u>Renumbered</u>	

ARTICLE 7. PUBLIC PARTICIPATION PROCEDURES

Section

R4-19-701.	Agency <u>Rulemaking</u> Record; Directory of Substantive Policy Statements
R4-19-702.	Petition for Rulemaking; Review of Agency Practice or Substantive Policy Statement; Objection to Rule Based Upon Economic, Small Business, or Consumer Impact
R4-19-703.	Public Comments
R4-19-704.	R4-19-703. Oral Proceedings
R4-19-705.	R4-19-704. Petition for Delayed <u>Altered</u> Effective Date
R4-19-706.	R4-19-705. Written Criticism of <u>an Existing</u> Rule
R4-19-706.	<u>Renumbered</u>

ARTICLE 6. RULES OF PRACTICE AND PROCEDURE

~~R4-19-601.~~ Expired

~~R4-19-602.~~ ~~R4-19-601.~~ Initiation of a Hearing Administrative Hearings

A. A hearing shall be initiated in the manner provided by the statute or rule authorizing the hearing. When a hearing is initiated by a request for hearing served upon the Board, the request for hearing shall be in writing and shall clearly state:

- ~~1. The identity of the person requesting the hearing;~~
- ~~2. The specific actions of the Board which are the basis of the hearing request, and~~
- ~~3. The reasons necessitating a hearing.~~

If the Board denies a license or certificate, the applicant for the license or certificate may obtain an administrative hearing by complying with A.R.S. § 41-1092.03.

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- B.** If the Board serves a licensee or certificate holder with a disciplinary action notice under A.R.S. § 32-1663(G), the licensee or certificate holder may obtain an administrative hearing by submitting to the Board a written request that contains the following information:
 - 1. The person's identity, and
 - 2. The reason for the hearing.
- C.** If it is unable to take action under subsection (A) or (B) because they are not applicable, and the Board determines that there are reasonable grounds to support a charge that the licensee, certificate holder, nursing program, or nursing assistant training program has violated one or more of the Board's statutes or rules, the Board shall schedule and serve notice of an administrative hearing under A.R.S. §§ 32-1664(H) and 41-1092.05.
- B.D.** A panel of Board members may The Board, or an administrative law judge, as defined in A.R.S. § 41-1092 shall conduct administrative hearings or other proceedings or request that a matter be assigned to an administrative law judge.
- E.** A party named in a notice of hearing shall file a response as required by A.R.S. § 32-1664 and R4-19-604.

~~R4-19-603. R4-19-602. Denial of Request for Hearing Letter of Concern~~

~~If the Board denies the request for hearing, the Board shall provide to the applicant a written copy of the decision stating the reasons for denial.~~

~~A letter of concern issued by the Board is not an appealable agency action as defined in A.R.S. § 41-1092.~~

~~R4-19-604. R4-19-603. Representation~~

~~Any party person subject to a hearing may participate in the hearing in person or through legal counsel, and may be represented by legal counsel. In those hearings conducted by a panel of Board members, a corporation shall be represented by an attorney. A party shall pay for its own legal representation. The Board shall not pay for the person's legal counsel.~~

~~R4-19-605. R4-19-604. Notice of Hearing; Response~~

- A.** ~~The Board, in consultation with the Office of Administrative Hearings, as necessary shall set the time and place of the hearing and give prepare and serve a written notice of hearing to on all parties under A.R.S. § 41-1092.05.~~
- B.** ~~The notice shall contain: In addition to the notice requirements in A.R.S. § 41-1092.05(D), the Board shall include the following in the notice:~~
 - 1. ~~The date, time, location, and nature of the hearing;~~
 - 2. ~~A statement of the legal authority and jurisdiction under which the hearing is to be held;~~
 - 3. ~~A reference to the particular Sections of the statutes and rules involved;~~
 - 4. ~~A short and plain statement of the matters asserted. If the Board is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, upon application, a more definite and detailed statement shall be furnished;~~
 - 5-1. ~~The full name, address, and license number, if any, of the licensee, certificate holder, program, or applicant;~~
 - 6-2. ~~The name, mailing address, and telephone number of the Board's executive director or Board designee if the hearing is to be conducted by the Board;~~
 - 7-3. ~~A statement that a hearing will proceed without a party's presence if a party fails to attend or participate in the hearing;~~
 - 8-4. ~~The names and mailing addresses of persons to whom notice is being given, including the Attorney General representing the state at the hearing; ; and~~
 - 5. ~~Any other matters relevant to the proceedings.~~
- C.** ~~The notice may include any other matters that the Board considers desirable to expedite the proceedings.~~
- C.** ~~The party named in the notice of hearing shall file a written response under A.R.S. § 32-1664 within 30 days after service of the notice of hearing. The response shall contain:~~
 - 1. ~~The party's name, address, and telephone number;~~
 - 2. ~~Whether the party has legal representation and, if so, the name and address of the attorney;~~
 - 3. ~~A response to the allegations contained in the notice of hearing; and~~
 - 4. ~~Any other matters relevant to the proceedings.~~

~~R4-19-606. R4-19-605. Filing; Computation of Time; Extension of Time Docket~~

- A.** ~~The Board shall maintain a docket of all proceedings and shall assign each proceeding a docket number.~~
- B.** ~~All papers in any proceeding shall be filed in the office of the Board within the time limit, if any, for the filing. Papers may be transmitted by ordinary or express mail, or otherwise delivered, but must be timely received at the office of the Board. Service thereof shall be made concurrently on all parties to the proceeding. A document shall be considered to be filed on the date received by the Board, established by the date stamp of the office of the Board on the document's face.~~
- C.** ~~Unless otherwise specifically provided in the rules or by an order of the Board, an original and one copy of all papers shall be filed.~~
- D.** ~~In computing any period of time prescribed or allowed by this Article, the day of the act, event, or default after which the designated period of time begins to run shall not be included. The last day of the period shall be included unless it is Saturday, Sunday, or a state holiday, in which event the period runs until the end of the next day which is neither Saturday,~~

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Sunday, nor a state holiday. The computation shall include intermediate Saturdays, Sundays, and state holidays. Whenever a notice or other paper is served by mail upon a party, five calendar days shall be added to the prescribed period.

- E. For good cause shown, the panel of Board members, if the hearing is to be conducted by the Board, or the administrative law judge may grant continuances and extensions of time.

~~R4-19-607, R4-19-606, Record of Hearings~~

The Board shall ~~maintain~~:

1. ~~Maintain~~ a complete and separate record containing all documents and exhibits filed in connection with each hearing; ~~and~~
2. ~~Such~~ Make the record ~~shall be made available to the public~~, upon request, ~~to the public~~ during regular business hours ~~except for those records that are confidential by law.~~

~~R4-19-612, R4-19-607, Recommended Decision~~

- A. The panel of Board members or the administrative law judge shall render a recommended decision.
- B. A recommended decision shall include separately stated findings of fact, conclusions of law, and the reasoning for the disciplinary action, if any.
- C. Findings of fact shall be as required by A.R.S. § 41-1061(G). The experience, technical competence, or specialized knowledge of the panel of Board members or the administrative law judge may be utilized in evaluating evidence.
- D. A recommended decision pursuant to this Section shall be rendered within 15 days after conclusion of the hearing or after submission of proposed findings by the parties, unless the Board waives or extends this period for good cause.
- E. The recommended decision shall be delivered to the Board.
- F. The Administrative Law Judge who conducts the hearing shall make a recommended decision under A.R.S. § 41-1092.08. The Board shall immediately transmit a copy of the recommended decision to each party. Each party may file a memorandum of objections for consideration at the next Board meeting to it that contains the reasons why the recommended decision is in error or requires correction, and includes appropriate citations to the record, statutes, or rules in support of each objection. The memorandum shall detail reasons why the recommended decision is in error and shall include appropriate citations to the record, statutes, rules, or other authority.

~~R4-19-608, Expired~~

~~R4-19-614, R4-19-608, Rehearing or Review of Decision~~

- A. Any party in a contested case before the Board who is aggrieved by a decision rendered in the case may file with the Board, within the time limits set in A.R.S. § 32-1665(A), a written motion for rehearing or review of the decision specifying the particular grounds therefor. For purposes of this subsection, a decision shall be deemed served when personally delivered or when mailed by certified mail to the party's address of record.
A party may file a motion for rehearing or review of a decision under A.R.S. §§ 41-1092.09 and 32-1665.
- B. A motion for rehearing or review under this rule may be amended at any time before it is ruled upon by the Board. Any other party may file a response within 10 days after service of the motion or amended motion. The Board may require the filing of written briefs upon the issues raised in the motion and may provide for oral argument.
- ~~C. B.~~ The Board may grant ~~A~~ a rehearing or review of the decision ~~may be granted~~ for any of the following causes materially affecting the moving party's rights:
 1. Irregularity in the administrative proceedings of the ~~agency, Board or~~ the administrative law judge, ~~or Board, the prevailing party,~~ or any order, or abuse of discretion, ~~whereby which deprived~~ the moving party was deprived of a fair hearing;
 2. Misconduct of the ~~panel of Board members,~~ the administrative law judge, or the prevailing party;
 3. Accident or surprise ~~which that~~ could not have been prevented by ordinary prudence;
 4. Newly discovered material evidence ~~which that~~ could not, with reasonable diligence, have been discovered and produced at the original hearing;
 5. Excessive or insufficient penalties;
 6. Error in the admission or exclusion of evidence or other errors of law occurring during the pendency of the proceeding or at the administrative hearing; or
 7. ~~That the~~ The decision is not justified by the evidence or is contrary to law.
- ~~D. C.~~ Upon the Board's receipt of a motion for rehearing or review, the Board may affirm or modify the decision or grant a rehearing to all or any of the parties ~~and~~ on all or part of the issues for any of the reasons ~~set forth~~ in subsection C (B). An order granting a rehearing shall specify with particularity the ~~ground or grounds~~ for the order, on which the rehearing is granted, and the Any rehearing shall cover only those specified matters.
- ~~E. D.~~ Within the time limits of A.R.S. § ~~32-1665~~ 41-1092.09, the Board may, ~~on its own initiative,~~ order a rehearing or review ~~of its decision on its own initiative~~ for any reason of the reasons in subsection (B), for which it might have granted a rehearing or review ~~on motion of a party.~~ After giving the parties and their counsel notice and an opportunity to be heard ~~on the matter, the Board may grant a motion for rehearing for a reason not stated in the motion. In either case, the order granting a rehearing shall specify the grounds therefor. The Board shall specify the grounds for the rehearing or review in the order.~~

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~~F.E.~~ When a motion for rehearing is based upon affidavits, they shall be served with the motion. An opposing party may, within ~~10~~ 15 days ~~after~~ of such service, serve opposing affidavits.

R4-19-609. Expired

R4-19-615. R-4-19-609. Effectiveness of Orders

- A. Except as provided in subsection (B), a decision ~~shall be~~ is final upon expiration of the time for filing a request for rehearing or review or upon denial of such a request, whichever is later. If the Board grants a rehearing ~~is granted or review~~, the decision ~~shall be~~ is stayed until ~~readopted or~~ another order is issued.
- B. If ~~the Board makes specific findings that the immediate effectiveness of a decision is necessary for the immediate preservation of the public health, safety, or welfare and that a rehearing or review of the decision is impracticable, unnecessary, or contrary to the public interest, the decision may be issued as a final decision without an opportunity for a rehearing or review. it finds that the public health, safety, or welfare imperatively requires emergency action, the Board may proceed under A.R.S. § 41-1092.11(B), ordering summary suspension of a license while other proceedings are pending. If a decision as a final decision without an opportunity for rehearing or review, the decision shall be effective when issued and any application for the Board orders a summary suspension, a party shall exhaust the party's administrative remedies by filing a motion for rehearing or review under A.R.S. § 41-1092.09(B) before seeking judicial review of the decision, shall be made within the time limits permitted for applications for judicial review of the Board's final decisions.~~

R4-19-612. Renumbered

R4-19-614. Renumbered

R4-19-615. Renumbered

ARTICLE 7. PUBLIC PARTICIPATION PROCEDURES

R4-19-701. Agency Rulemaking Record; Directory of Substantive Policy Statements

The Board shall place the official rulemaking record and directory of substantive policy statements ~~is located~~ in the office of the Board, ~~and where it~~ may be reviewed any working day, Monday through Friday, from 8:00 a.m. until 5:00 p.m., except state holidays.

R4-19-702. Petition for Rulemaking; Review of Agency Practice or Substantive Policy Statement; Objection to Rule Based Upon Economic, Small Business, or Consumer Impact

A person may petition the Board, requesting the making of ~~A petition to adopt, amend, or repeal a final rule, or to a review of~~ an existing agency practice or substantive policy statement that the petitioner alleges to constitute a rule, ~~pursuant to under~~ A.R.S. § 41-1033, or ~~to object~~ objecting to a rule in accordance with under A.R.S. § 41-1056.01, ~~shall be filed by filing a petition with the Board as prescribed in this Section which contains the following: Each petition shall contain:~~

1. The name, ~~and~~ current address, and telephone number of the person submitting the petition.
2. For the adoption making of a new rule, the specific language of the proposed rule.
3. For the amendment of a current rule, the ~~citation for the applicable Arizona Administrative Code (A.A.C.) Section number, and rule title~~ the Section heading. ~~The request shall include and~~ the specific language of the current rule, with any language to be deleted ~~shall be~~ stricken through but legible, and any new language ~~shall~~ underlined.
4. For the repeal of a current rule, the ~~citation for the applicable A.A.C. Section number and title of the rule~~ Section heading proposed for repeal.
5. The reasons the rule should be ~~adopted, amended, or repealed~~ made, specifically stating in reference to an existing rule, why the rule is inadequate, unreasonable, unduly burdensome, or otherwise not acceptable. The petitioner may provide ~~Additional additional~~ supporting information for the petition ~~may be provided~~; including:
 - a. Any statistical data or other justification, with clear references to attached exhibits;
 - b. An identification of ~~what persons~~ any person or segment of the public that would be affected and how they would be affected; and
 - c. If the petitioner is a public agency, a summary of relevant issues raised in any public hearing, or ~~as~~ written comments offered by the public.
6. For a review of an existing agency practice or substantive policy statement alleged to constitute a rule, the reasons the existing agency practice or substantive policy statement constitutes a rule and the proposed action requested of the agency Board.
7. For an objection to a rule based upon the economic, small business, or consumer impact, evidence that:
 - a. The actual economic, small business, or consumer impact significantly exceeded the impact estimated in the economic, small business, and consumer impact statement submitted ~~on adoption~~ during the making of the rule; or
 - b. The actual economic, small business, or consumer impact was not estimated in the economic, small business, and consumer impact statement ~~on adoption~~ during the making of the rule and that actual impact imposes a significant burden on persons subject to the rule.
8. The signature of the person submitting the petition.

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R4-19-703. Public Comments

- A. Any person may comment upon a rule proposed by the Board by submitting written comments on the proposed rule or upon any other matter noticed for public comment in the Arizona Administrative Register to the Board on or before the date of the close of record.
- B. A written comment is considered to have been submitted on the date it is received by the Board, except if a comment is mailed, the date of receipt shall be the postmarked date.
- C. All written comments received pursuant to A.R.S. § 41-1023 shall be considered by the Board.

R4-19-704. R4-19-703, Oral Proceedings

- A. Requests for oral proceedings, as prescribed in A.R.S. § 41-1023(C), shall:
 - 1. Be filed with the Board;
 - 2. Include the name and current address of the person making the request; and
 - 3. Refer to the proposed rule and include, if known, the date and issue of the Arizona Administrative Register in which the notice was published.

The Board shall schedule an oral proceeding on all rulemakings and publish the notice as prescribed in A.R.S. § 41-1023. A Board member, the executive director, or a Board staff member shall serve as presiding officer at an oral proceeding.

- B. The Board shall record all oral proceeding proceedings shall be recorded either by an electronic recording device or stenographically, and any resulting cassette tapes or transcripts, registers, and all written comments received shall become part of the official record.
- C. The presiding officer shall utilize the following guidelines to conduct an oral proceedings: proceeding according to A.R.S. § 41-1023; and
 - 1. Voluntary registration of attendees Request each person in attendance register.
 - 2. Obtain the following information from any person who intends to speak: Registration of persons intending to speak. Registration information shall include
 - a. the registrant's name Name; and representative capacity whether the person represents another, if applicable;
 - b. a notation of their position Position with regard to the proposed rule; and
 - c. the approximate Approximate length of time they wish needed to speak.
 - 3. Opening of the record. The presiding officer shall open Open the proceeding by identifying the subject matter of the rules to be considered under consideration, the location, date, time, and the purpose of the proceeding; and
 - 4. present Present the agenda;
 - 4.5. A statement by Board representative. The statement Ensure that a Board representative shall explain explains the background and general content of the proposed rules; ;
 - 5.6. A public oral comment period. Comments may be limited Limit comments to a reasonable time period, as determined by the presiding officer. Oral comments may be limited to and prevent undue repetition of comments; ;
 - 6.7. Closing remarks. The presiding officer shall announce Announce the location where the address for written public comments are to be sent and the date and time of for the close of record; ; and
 - 8. Close the proceeding if there are no persons in attendance within 15 minutes after the posted meeting time.

R4-19-705. R4-19-704, Petition for Delayed Altered Effective Date

- A. A person wishing to alter the effective date of a rule shall file a written petition that contains: A written petition to delay the effective date of the rule, pursuant to A.R.S. § 41-1032, shall be filed with the Board. The petition shall contain:
 - 1. The name, and current address, and telephone number of the person submitting the petition;
 - 2. Identification of the proposed rule;
 - 3. The need for the delay, specifying the undue hardship or other adverse impact that may result if the request for a delayed effective date is not granted, and the reasons why the public interest will not be harmed by the later date If the person is petitioning for an immediate effective date, a demonstration that the immediate date is necessary for one or more of the reasons in A.R.S. § 41-1032(A); and
 - 4. If the person is petitioning for a later effective date, more than 60 days after filing of the rule, a demonstration under A.R.S. § 41-1032(B) that good cause exists for, and the public interest will not be harmed by, the later effective date; and
 - 4.5. The signature of the person submitting the petition.
- B. The Board shall make a decision and notify the petitioner of the decision within 60 days of receipt of the petition.

R4-19-706. R4-19-705, Written Criticism of an Existing Rule

- A. Any person may file with the Board a written criticism of an existing rule with the Board that contains:
- B. The criticism shall clearly identify
 - 1. the The rule addressed, and
 - 2. specify why The reason the existing rule is inadequate, unduly burdensome, unreasonable, or otherwise considered to be improper.
- C. B. The Board shall acknowledge receipt of any criticism within 10 working days and shall place the criticism in the official record for review by the Board pursuant to under A.R.S. § 41-1056.

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R4-19-706. Renumbered

NOTICE OF FINAL RULEMAKING

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 2. DEPARTMENT OF ENVIRONMENTAL QUALITY

AIR POLLUTION CONTROL

PREAMBLE

1. Sections Affected

Article 13
R18-2-1301
R18-2-1302
R18-2-1303
R18-2-1304
R18-2-1305
R18-2-1306
R18-2-1307

Rulemaking Action

New Article
New Section
New Section
New Section
New Section
New Section
New Section
New Section

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. §§ 1-215(4), 49-104(A)(11), and 49-411; Laws 2002, Ch. 260, §§ 11, 19-21; Laws 2002, Ch. 328, § 28

3. The effective date of the rules:

April 2, 2003—Immediately on filing with the Office of the Secretary of State. Under A.R.S. § 41-1032, as amended by Laws 2002, Ch. 339, an agency that wants a rule to become effective immediately on filing with the Secretary of State must demonstrate that one of five criteria apply. At least two of the criteria apply to these rules.

These rules provide a benefit to the public and a penalty is not associated with a violation of the rule.

These rules are necessary for the awarding of grants for conversion of diesel vehicles to alternative fuel under A.R.S. § 49-411. The public benefits from the conversion of diesel vehicles in two ways. First, because these vehicles have fewer emissions, the conversion of diesel vehicles results in cleaner air, and public health will benefit. Second, the conversion of diesel vehicles will also benefit the state economy because most, if not all conversions, will take place in Arizona and grant money (from the Clean Air Fund) will be reintroduced into the Arizona economy. Although R18-2-1304(A)(2) recites consequences associated with perjury and untrue statements, these are not penalties that will be new with the effective date of the rule. These penalties have been in place for many years. In addition, participation in the grant program itself is voluntary, and the consequences are associated with violations of the statutory conditions for the grants. There are no penalties associated with violations of the new rules.

To comply with deadlines in amendments to an agency's governing statute, if the need for an immediate effective date is not created by the agency's delay or inaction.

The deadline for awarding grants is June 30, 2003, because, under statute, ADEQ's ability to award these grants ends then. This rule is necessary to award grants. ADEQ filed the docket opening on these rules on August 23, 2002, the day after the implementing statute became effective. ADEQ filed proposed rules one week after that. With this schedule, a January 2003 G.R.R.C. meeting was the earliest possible date for consideration.

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

Notice of Rulemaking Docket Opening: 8 A.A.R. 3936, September 13, 2002

Notice of Proposed Rulemaking: 8 A.A.R. 4000, September 20, 2002

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

Name: Mark Lewandowski
Address: Arizona Department of Environmental Quality
1110 W. Washington
Phoenix, AZ 85007
Telephone: (602) 771-2230
Fax: (602) 771-2366

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

Summary. These rules will continue and facilitate implementation of the Diesel Conversion Grant Program already implemented by the Arizona Department of Commerce under A.R.S. § 41-1516, and transferred to the Arizona Department of Environmental Quality (ADEQ) by HB 2099 of the 2002 Second Regular Session (Laws 2002, Ch. 260). The goal of the Diesel Conversion Grant Program is to lower on-road vehicle emissions in area A and area B by reducing emissions from large, on-road diesel vehicles in those areas.

Since the mid-1990s, the Legislature has created alternative fuel tax incentives and grants to encourage the use of alternative fuel and the purchase, lease, or conversion of alternative fuel vehicles. The Arizona Department of Commerce was authorized to provide diesel conversion grants under this program until August 22, 2002, at which time HB 2099 transferred the program to ADEQ. The Diesel Conversion Grant Program has been modified somewhat by the legislature since its inception in 2000, and currently applies to certain diesel vehicles with a Gross Vehicle Weight Rating of 19,500 pounds or more that will be Arizona-registered for three or more years and operated more than 50% of the time in Area A or Area B. Through HB 2708 (Laws 2002, Ch. 328), this latest phase of the program allows monies to be encumbered before actual conversion through issuance of a pre-approval letter. The grant amount is for the cost of conversion or \$30,000, whichever is less.

These rules establish procedures and implement the statutory requirements by providing specific requirements and procedures for grant applicants. The rules provide for processing applications and awarding grants fairly and ensure continuity with the conversion grant program rule previously in place. On September 24, 2002, ADEQ received a waiver from the grant solicitation process from the director of Arizona Department of Administration in accordance with A.R.S. § 41-2703.

Emission Benefits. Emissions from converted diesel vehicles are required to meet national standards under § 203(a) of the Clean Air Act (CAA) and an EPA enforcement policy known as Memo 1A. Under an addendum to this policy, after December 31, 1998 (extended to March 31, 2002) parties may only manufacture, sell, or install alternative fuel conversion systems that are covered by an EPA Certificate of Conformity or that meet the revised California certification procedures for such equipment. (See 62 FR 55635, October 27, 1997.)

Although A.R.S. § 49-411 allows grants for the conversion of diesel vehicles to any of a number of alternative fuels, ADEQ expects the primary type of conversion that will be employed by persons seeking a grant under these rules will be to an engine capable of running on a mixture of approximately 85% compressed natural gas (CNG) and 15% diesel through a process called pilot injection. The California Air Resources Board (CARB) has certified systems of this type for certain Caterpillar Inc. engine families for 1994 and later vehicles. Based on these certifications, and assuming the converted vehicles are used in applications where CNG refueling facilities are available and CNG is the primary fuel (this configuration can be operated on diesel only), ADEQ has estimated potential emission benefits. Each converted new vehicle's emissions will be below current federal standards for the following four regulated pollutants: non-methane organic compounds (NMOC), carbon monoxide (CO), nitrogen oxides, (NOx), and particulates. Specific reductions will depend on the model year, type, and condition of the vehicle being converted. In addition, ADEQ expects actual emission benefits compared to the unconverted, diesel only engine for NOx, particulates, and NMOC. Based on data from the CARB certifications, CO emissions are expected to increase somewhat compared to the unconverted diesel engine, but remain substantially under the federal standard of 15.5 grams/brake horsepower-hour.

Another type of conversion that may qualify for a grant under this program is a complete OEM engine replacement with an EPA or CARB-certified engine that runs on alternative fuel. This type of conversion would have emission benefits greater than or equal to the pilot injection systems discussed above.

Program Beginning and End. A.R.S. § 49-411 and the ADEQ's ability to encumber funds for this program became effective on August 22, 2002, but A.R.S. § 49-411 is repealed after June 30, 2003 (HB 2099, § 21). Due to the possibility of actual payments being made 225 days after funds can be encumbered (See HB 2708, § 28, Laws 2002, and R18-2-1304(F)(1), 180 days on the application priority list plus one 45 day extension) it would be possible for grants to be paid as late as February 10, 2004. (June 30, 2003, plus 225 days.)

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

None

8. 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

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

ADEQ has assessed the economic impact of these rules on Arizona small businesses, various entities, and the public. ADEQ's assessment is that the impact will be minimal in terms of cost and time resources, and moderate in terms of benefits. The rules require conversion vendors and grant applicants to provide the Department with certain documentation and to verify that documentation, if necessary. In return, through the award of a grant, a diesel vehicle's emissions are improved and up to a maximum of \$30,000 in revenue per vehicle is returned to the Arizona economy. The

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cost to provide copies of documentation for an application and the time to compile the required documentation and complete the application will minimally affect the small businesses and other entities applying for a grant. The cost to ADEQ to write these rules, process applications, verify eligibility, and distribute monies will moderately to significantly affect ADEQ, but no new staff will be hired. ADEQ estimates that the approximately 1/2 FTE needed for extra responsibilities will be absorbed by existing staff for approximately one year. The costs for developing communication materials and forms, printing, and mailing will be small.

In the year prior to August 22, 2002, the Arizona Department of Commerce distributed about one-half million dollars for conversions very similar to the ones provided for in these rules. The grants covered 19 vehicles and were for conversions to run on an 85/15 ratio of compressed natural gas to diesel. All of the conversions were done by primarily one conversion vendor.

The following tables break down the costs and benefits of these rules in more detail:

Vehicle Owners in areas A and B (Impacts on an individual basis)

Benefits	Costs
All vehicle owners: cleaner vehicle exhaust. Small.	Vehicle not in service for approximately 3-5 working days during conversion, depending on pre-existing configuration. Moderate.
Public sector fleet vehicle owners will find it easier to meet the alternative fuel vehicle requirements in A.R.S. §§ 9-500.04(C), 15-349, 41-803, 49-474.01, 49-571, and 49-573. Up to \$30,000 per vehicle is provided for these requirements. Significant.	Administrative costs: filling out applications and other forms, time, and materials. Small.

Conversion Vendors (Impacts on an individual basis)

Benefits	Costs
Increased business for company, expected profits. Moderate to significant, depending on number converted.	Administrative costs: filling out applications and other forms, time, and materials. Small.

Public in Areas A and B

Benefits	Costs
Cleaner air, especially significant for sensitive populations such as children, the elderly, and those with respiratory ailments. Moderate to significant, depending on number converted.	Grant money in Clean Air Fund could be spent elsewhere. No estimate.
Indirect economic benefit through increased economic activity in areas A and B. No estimate.	

ADEQ

Benefits	Costs
Experience and knowledge gained for future alternative fuel programs. No estimate.	Approx. 1/2 FTE. Significant.

(Small means less than \$1000; moderate means \$1000-\$10,000; significant means more than \$10,000)

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. ADEQ considered each of the methods prescribed in A.R.S. §§ 41-1035 and 41-1055(B)(5)(c) for reducing the impact on small businesses. The methods to be considered are:

- (1) Establish less stringent compliance or reporting requirements in the rule for small businesses.
- (2) Establish less stringent schedules or deadlines in the rule for compliance or reporting requirements for small businesses.

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- (3) Consolidate or simplify the rule’s compliance or reporting requirements for small businesses.
- (4) Establish performance standards for small businesses to replace design or operational standards in the rule.
- (5) Exempt small businesses from any or all requirements of the rule.

The general statutory objectives that are the basis of this rule are contained in the statutory authority cited in item #2 of this preamble. The specific objectives are to:

- (1) Provide for the prevention and abatement of all air pollution (A.R.S. § 49-104(A)(11)),
- (2) Award grants from the Clean Air Fund for the conversion of diesel vehicles to operate on alternative fuel, (A.R.S. § 49-411(H)), and
- (3) Allow ADEQ to encumber monies before the conversion of diesel vehicles upon being submitted certain information (Laws 2002, Ch. 328, § 28).

ADEQ has evaluated each of the five listed methods and has concluded that none of the methods are legal and feasible. Methods one through four are not applicable because they relate to compliance or reporting requirements and performance standards, and there are no compliance or reporting requirements or performance standards in these final rules. ADEQ evaluated method number 5 and considered whether it could exempt small businesses from any or all requirements of the rule. ADEQ found that the requirements in this rule are primarily requirements to submit information, and that most of these come directly from the implementing statute. In addition, ADEQ determined that where it could exempt small business applicants from submitting certain information, it could exempt all applicants from submitting that information. ADEQ removed five items of information in the final rule that were requested from the applicant in the proposed rule. The items, and their locations in the proposed rule, were:

- 1. Arizona Driver’s License (R18-2-1304(C)(1)(c))
- 2. Copy of lease or purchase contract (R18-2-1304(C)(1)(f))
- 3. Payment receipt for vehicles with no liens (R18-2-1304(C)(6))
- 4. Copy of finance agreement for vehicle (R18-2-1304(C)(7))
- 5. Copy of lease agreement for vehicle (R18-2-1304(C)(8))

No further exemptions from information submittal requirements were found to be legal and feasible.

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

The changes shown below with strike out (~~strike-out~~) and underline, were made in cooperation with G.R.R.C. staff to improve the clarity, conciseness, and understanding of the rule:

ARTICLE 13. DIESEL CONVERSION GRANT PROGRAM

- R18-2-1301. Definitions
- R18-2-1302. Available Funds
- R18-2-1303. Eligibility
- R18-2-1304. Application Process
- R18-2-1305. Application Priority List ~~and Grant Awards~~
- R18-2-1306. Grant Amount
- R18-2-1307. ~~Informal Review;~~ Appeal of Grant Determination

ARTICLE 13. DIESEL CONVERSION GRANT PROGRAM

R18-2-1301. Definitions

The following definitions apply in this Article, unless the context otherwise requires:

- 1. “Alternative fuel” has the ~~same meaning as its definition~~ in A.R.S. § 1-215.
- 2. “Alternative fuel vehicle” means a self-propelled vehicle that is registered and titled in this state for operation on the highways and that is propelled by an alternative fuel.
- 3. “Application” means the application submitted to the Department as specified in R18-2-1304.
- 4. “Application priority list” means the list specified in R18-2-1305.
- 5. “Conversion” means modification of a diesel vehicle to operate on an alternative fuel.
- 6. “Cost of conversion” means the ~~reasonable and customary~~ actual cost of conversion, ~~taking into account including~~ the parts and materials used, the ~~usual~~ hours required for conversion, and the ~~prevailing~~ hourly rate for labor of this type in the county where the conversion is accomplished, as shown by receipts or other evidence.
- 7. “Diesel vehicle” means a vehicle that operates only on diesel fuel.

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8. "Director" means the Director of the Department of Environmental Quality or designee.
9. "GVWR" means the gross vehicle weight rating, the maximum loaded weight for which the vehicle is designed, as specified by the vehicle manufacturer.
10. "MVD Alternative Fuel Certificate" means a form issued by the Arizona Department of Transportation Motor Vehicle Division certifying that the vehicle has been inspected and is equipped to operate on alternative fuel. An applicant shall obtain this Certificate from an:
 - a. Arizona Department of Environmental Quality waiver station, or
 - b. Arizona Department of Environmental Quality licensed third-party inspector.
11. "Pre-approval letter" means a letter issued by the Department as specified in R18-2-1304.

R18-2-1302. Available Funds

Funds are available only as appropriated by the legislature. Once all available funds have been encumbered, the Department shall ~~send written notification of this fact to all those who have submitted an application, but~~ notify all applicants who have not been ~~included~~ placed on the application priority list.

R18-2-1303. Eligibility

~~An applicant~~ A person may submit an application for a grant under this Article if the ~~applicant person~~ person has a purchase order or contract that is dated on or after January 1, 2000, to convert a diesel vehicle and the vehicle ~~meets the following criteria:~~

1. Has not previously been the subject of a grant under this program;
2. Has a GVWR of at least 19,500 lbs;
3. Is not a recreational vehicle as defined in A.R.S. § 28-3102;
4. Is registered in this state;
5. Will be registered in this state for at least three years from the date the vehicle is registered as an alternative fuel vehicle;
6. Will be operated more than 50 percent of the time in area A or area B as defined in A.R.S. § 49-541; and
7. Is subject to A.R.S. § 28-4032(A), is a school bus, or a municipal vehicle.

R18-2-1304. Application Process

~~A. All applications~~ An applicant shall be submitted submit an application to the Department ~~before 5 p.m., June 16, 2003.~~

~~B. The Department shall make application forms available to the public.~~

~~C. Applicant shall submit an application to the Department for each vehicle for which the applicant is claiming a grant, before 5:00 p.m., June 30, 2003, on a form provided by the Department.~~ The application shall contain:

1. The application form prescribed by the Department with the following information included:
 - a. Applicant's status as an individual or a business;
 - b. Applicant's name, address, and telephone number;
 - ~~e.~~ If applicant is an individual, the individual's Arizona Driver's License number;
 - ~~d.c.~~ If the applicant is a business, school district, or municipality, the applicant's:
 - i. Federal Taxpayer Identification Number; and
 - ii. Authorized representative's name and title;
 - ~~e.d.~~ The vehicle's:
 - i. Vehicle identification number (VIN),
 - ii. Model year,
 - iii. Make,
 - iv. Model, and
 - v. GVWR;
 - ~~f.e.~~ From whom the applicant purchased or leased the vehicle, the contract for that transaction, and the contact's seller or lessor's telephone number;
 - ~~g.f.~~ The Arizona registration date of the vehicle;
 - ~~h.g.~~ For the converted or to-be-converted vehicle:
 - i. The conversion vendor's name and business address, contact person, and the contact's telephone number;
 - ii. The conversion kit manufacturer and kit serial number; and
 - iii. The conversion date or expected conversion date;
 - ~~i.h.~~ The type of alternative fuel the converted vehicle uses or will use:
 - i. Compressed natural gas-CNG,
 - ii. Liquid natural gas-LNG,
 - iii. ~~Propane~~ Liquefied petroleum gas-LPG,
 - iv. Electric,
 - v. Solar, or
 - vi. Hydrogen.

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2. A signed and dated "Statement of Assurances" on a form prescribed by the Department that includes:
 - a. A statement signed by the applicant, under penalty of perjury, that the applicant intends:
 - i. To keep the vehicle registered in this state for at least three years from the date the vehicle is registered as an alternative fuel vehicle;
 - ii. To operate the vehicle more than 50 percent of the time in area A or area B as defined in A.R.S. § 49-541;
 - b. An additional statement that:
 - i. The applicant owns or leases the vehicle;
 - ii. The applicant has the vehicle titled, registered, and insured in Arizona ~~or has so applied~~;
 - iii. The vehicle is not a recreational vehicle as defined in A.R.S. § 28-3102;
 - iv. The vehicle is a diesel vehicle over 19,500 pounds GVWR that has been or will be converted to operate on alternative fuel; and
 - v. The vehicle is subject to A.R.S. § 28-4032(A), ~~or~~ is a school bus, ~~or~~ a municipal vehicle.
 - c. An additional statement that applicant agrees that, if the Statement of Assurances ~~or~~ and the application ~~packet~~ are not truthful, correct, ~~or~~ and complete, the Department may seek recourse ~~or take remedial action~~ in the Superior Court of Maricopa County, Arizona, with the applicant paying all costs of collection of any monies due the Department, including reasonable attorneys' fees.
 - d. A notarized statement as specified in A.R.S. § 41-311(6), under penalty of perjury, that the information contained in the application ~~packet~~ is truthful, correct, and complete.
3. A current and complete W-9 Federal tax form (Request for Taxpayer Identification Number and Certification);
4. A copy of the validated Arizona registration and Arizona title for the vehicle (for a new vehicle, these copies ~~must~~ shall be submitted within 15 days of receipt from the state);
5. A copy of the contract, or purchase order entered into by the applicant, for conversion of the vehicle for which applicant requests a grant;
6. If the vehicle is owned outright, a copy of the receipt indicating payment in full not a school bus or a municipal vehicle, a copy of the declarations page from the current liability policy for the vehicle, or other evidence of compliance with A.R.S. § 28-4032(A);
7. ~~If the vehicle is financed, a copy of the financing agreement;~~
8. ~~If the vehicle is leased, a copy of the lease agreement;~~
- 9-7. If the conversion has been completed, copies of:
 - a. The MVD Alternative Fuel Certificate issued according to A.R.S. § 28-2416; and
 - b. The invoice or other evidence of the cost of conversion, ~~which will include~~ including:
 - i. The conversion date;
 - ii. A list of all parts used by the conversion vendor;
 - iii. A list of all tasks completed by the conversion vendor, specifying the hours spent on each task and the hourly rate charged; and
 - iv. The conversion kit manufacturer and kit serial number or serial number of conversion parts.

~~D.B.~~ The Department may require verification of information provided, including original documents.

~~E.C.~~ The Department shall review an application for completeness and eligibility for a grant.

~~F.D.~~ If the Department determines that the application is complete through ~~at least~~ subsection (C)(9)(A)(7), ~~and~~ funds are available as specified in R18-2-1302, ~~and the vehicle meets the eligibility requirements in R18-2-1303:~~

1. ~~If the conversion has not yet been completed and the vehicle meets the eligibility requirements:~~
 - a-1. The Department shall provide a pre-approval letter to the applicant, ~~which states stating that, when the vehicle is converted as specified in the application and the information specified in subsection (C)(9) is submitted to the Department, the applicant will be is eligible for a grant under the program, in an amount according to R18-2-1306 when the vehicle is converted as specified in the application and the information specified in subsection (A)(7) is submitted to the Department. The letter shall state the amount of the grant.~~
 - b-2. ~~Upon issuance of the pre-approval letter, After the Department provides the letter under subsection (1), the Department will shall~~ list the vehicle in the application priority list specified in R18-2-1305 and encumber the grant funds.
 - e-3. ~~The applicant shall complete the vehicle conversion must be completed and submit all requested information provided to the Department by the deadline date specified in the pre-approval letter, which. The deadline date shall be 180 days from the date of the letter. An applicant may ask the Department for an extension of the deadline date. For good cause shown, the Department may grant one extension of the deadline date of up to 45 days.~~
 4. If the applicant fails to comply with the requirements of the pre-approval letter, the ~~vehicle will be removed~~ Department shall remove the vehicle from the application priority list and ~~unencumber~~ unencumber the grant funds ~~unencumbered~~.
 - 4-5. If the Department determines that the applicant has complied with all the requirements of the pre-approval letter, the Department ~~will shall~~ shall notify the applicant in writing that a grant award will be paid to the applicant in the amount according to R18-2-1306.

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~~2-6.~~ If the conversion ~~was~~ is completed before the application ~~was~~ is submitted and the vehicle meets the eligibility requirements, the Department ~~will~~ shall list the vehicle in the application priority list specified in R18-2-1305 and encumber the grant funds. The Department ~~will~~ shall notify the applicant in writing ~~that it will pay applicant a~~ of the grant award in the amount according to determined under R18-2-1306.

~~G.E.~~ If an application ~~packet~~ is not complete, the Department shall notify applicant in writing that the application:

1. Cannot be processed because:
 - a. A specified item is missing, or
 - b. The Department requires additional specified action; and
2. Shall be processed after the applicant submits ~~the packet with~~ the additional required information and performs ~~the any~~ required action specified in the Department's notification to the applicant.
3. If the applicant ~~subsequently~~ completes the application, and the Department ~~then~~ approves it, ~~applicant's~~ the Department shall place the applicant on the application priority list ~~will be determined by the date of the contract or purchase order entered into by the applicant, if grant funds are still available on the date the application is approved described in R18-2-1305.~~

~~H.F.~~ If the Department determines that the vehicle specified in the application is not eligible for a grant under R18-2-1303, the Department shall notify the applicant in writing of the determination, including ~~the reason(s)~~ each reason for ineligibility.

R18-2-1305. Application Priority List ~~and Grant Awards~~

- A. The Department shall maintain for public inspection an application priority list for approved applications, where grant priority is determined by the date of the contract or purchase order entered into by the applicant.
- B.** If two or more vehicles have the same priority and ~~there are~~ insufficient funds exist to provide grants for each vehicle, the Department shall use ~~a~~ the following computer-based, random-number process to determine the order in which these vehicles ~~will be~~ are eligible for grant funds:
 1. Applications for each vehicle with the same priority shall be arranged in a stack, in any order, by the Director.
 2. A sequence of random numbers equal in length to the number of applications shall be generated using the random number generator at www.random.org/sform.html. One random number shall be assigned to each of the applications, with the top application receiving the first number in the sequence, continuing down through the stack until the bottom application has been assigned the last random number in the sequence.
 3. The applications shall then be ranked, with lower random numbers indicating higher priority.
 4. The Director shall notify each of the equal priority applicants of the random number process, to afford them the opportunity to be present when the random integers are assigned.
- B.** Grants shall be awarded within 30 days of the date the Department notifies applicant in writing that it will pay applicant a grant award in the amount according to R18-2-1306.

R18-2-1306. Grant Amount

The Department shall award grants to qualified applicants within 30 days of the date it notifies the applicant in writing that it will pay the applicant a grant award. The ~~director of the administrative services division or~~ Department deputy director shall award grants for the lesser of the cost of conversion or \$30,000 ~~to qualified applicants.~~

R18-2-1307. ~~Informal Review; Appeal of Grant Determination~~

- A. Any interested party may request ~~an informal~~ a review of:
 1. A determination of eligibility for a grant under this Article;
 2. ~~The~~ An applicant's priority in the awarding of the grants; or
 3. The amount of a grant under this Article.
- B.** If ~~such~~ a request for review is made, the funds ~~in dispute~~ requested for conversion shall be reserved until the Director's decision after ~~informal~~ the review under subsection ~~(B)~~ (C).
- ~~B.C.~~** A request under subsection (A) shall be made in writing, and received by the Director within 10 business days of the date of the determination. Unless the Director and the interested party agree otherwise, the ~~informal~~ review shall take place within 10 business days after the Director's receipt of the request. The Director shall arrange the date and location of the ~~informal~~ review with the interested party at least five business days before the ~~informal~~ review. The Director shall mail his or her review decision ~~on the informal review~~ to the interested party within five business days after the ~~informal~~ review date. The Director's decision after ~~informal~~ review ~~shall become~~ becomes final unless, within 30 days after ~~applicant's~~ the interested party's receipt of the ~~informal~~ review decision, the interested party requests a hearing under R18-1-202.

11. A summary of the comments made regarding the rules and the agency response to them:

ADEQ received no comments on the proposed rules. ADEQ made the change in R18-2-1304(C)(1)(i)(iii) based on further review. "Propane" was referenced as an alternative fuel. For consistency with A.R.S. § 1-215, ADEQ replaced "propane" with "liquefied petroleum gas-LPG." LPG is usually a blend of propane and butane. Propane by itself is not an considered an alternative fuel.

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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:

Not applicable

14. Was this rule previously made as an emergency rule?

No

15. The full text of the rules follows:

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 2. DEPARTMENT OF ENVIRONMENTAL QUALITY
AIR POLLUTION CONTROL

ARTICLE 13. ~~RESERVED~~ DIESEL CONVERSION GRANT PROGRAM

Section

- R18-2-1301. Definitions
- R18-2-1302. Available Funds
- R18-2-1303. Eligibility
- R18-2-1304. Application Process
- R18-2-1305. Application Priority List
- R18-2-1306. Grant Amount
- R18-2-1307. Review of Grant Determination

ARTICLE 13. ~~RESERVED~~ DIESEL CONVERSION GRANT PROGRAM

R18-2-1301. Definitions

The following definitions apply in this Article, unless the context otherwise requires:

1. "Alternative fuel" has the meaning in A.R.S. § 1-215.
2. "Alternative fuel vehicle" means a self-propelled vehicle that is registered and titled in this state for operation on the highways and that is propelled by an alternative fuel.
3. "Application" means the application submitted to the Department as specified in R18-2-1304.
4. "Application priority list" means the list specified in R18-2-1305.
5. "Conversion" means modification of a diesel vehicle to operate on an alternative fuel.
6. "Cost of conversion" means the actual cost of conversion, including the parts and materials used, the hours required for conversion, and the hourly rate for labor of this type, as shown by receipts or other evidence.
7. "Diesel vehicle" means a vehicle that operates only on diesel fuel.
8. "Director" means the Director of the Department of Environmental Quality or designee.
9. "GVWR" means the gross vehicle weight rating, the maximum loaded weight for which the vehicle is designed, as specified by the vehicle manufacturer.
10. "MYD Alternative Fuel Certificate" means a form issued by the Arizona Department of Transportation Motor Vehicle Division certifying that the vehicle has been inspected and is equipped to operate on alternative fuel. An applicant shall obtain this Certificate from an:
 - a. Arizona Department of Environmental Quality waiver station, or
 - b. Arizona Department of Environmental Quality licensed third-party inspector.
11. "Pre-approval letter" means a letter issued by the Department as specified in R18-2-1304.

R18-2-1302. Available Funds

Funds are available only as appropriated by the legislature. Once all available funds have been encumbered, the Department shall notify all applicants who have not been placed on the application priority list.

R18-2-1303. Eligibility

A person may submit an application for a grant under this Article if the person has a purchase order or contract that is dated on or after January 1, 2000, to convert a diesel vehicle and the vehicle:

1. Has not previously been the subject of a grant under this program;
2. Has a GVWR of at least 19,500 lbs;
3. Is not a recreational vehicle as defined in A.R.S. § 28-3102;
4. Is registered in this state;
5. Will be registered in this state for at least three years from the date the vehicle is registered as an alternative fuel vehicle;

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6. Will be operated more than 50 percent of the time in area A or area B as defined in A.R.S. § 49-541; and
7. Is subject to A.R.S. § 28-4032(A), is a school bus, or a municipal vehicle.

R18-2-1304. Application Process

- A.** An applicant shall submit an application to the Department for each vehicle for which the applicant is claiming a grant, before 5:00 p.m., June 30, 2003, on a form provided by the Department. The application shall contain:
1. The application form prescribed by the Department with the following information included:
 - a. Applicant's status as an individual or a business;
 - b. Applicant's name, address, and telephone number;
 - c. If the applicant is a business, school district, or municipality, the applicant's:
 - i. Federal Taxpayer Identification Number, and
 - ii. Authorized representative's name and title;
 - d. The vehicle's:
 - i. Vehicle identification number (VIN),
 - ii. Model year,
 - iii. Make,
 - iv. Model, and
 - v. GVWR;
 - e. From whom the applicant purchased or leased the vehicle and the seller or lessor's telephone number;
 - f. The Arizona registration date of the vehicle;
 - g. For the converted or to-be-converted vehicle:
 - i. The conversion vendor's name and business address, contact person, and the contact's telephone number,
 - ii. The conversion kit manufacturer and kit serial number, and
 - iii. The conversion date or expected conversion date;
 - h. The type of alternative fuel the converted vehicle uses or will use:
 - i. Compressed natural gas-CNG,
 - ii. Liquid natural gas-LNG,
 - iii. Liquefied petroleum gas-LPG,
 - iv. Electric,
 - v. Solar, or
 - vi. Hydrogen.
 2. A signed and dated "Statement of Assurances" on a form prescribed by the Department that includes:
 - a. A statement signed by the applicant, under penalty of perjury, that the applicant intends:
 - i. To keep the vehicle registered in this state for at least three years from the date the vehicle is registered as an alternative fuel vehicle;
 - ii. To operate the vehicle more than 50 percent of the time in area A or area B as defined in A.R.S. § 49-541;
 - b. An additional statement that:
 - i. The applicant owns or leases the vehicle;
 - ii. The applicant has the vehicle titled, registered, and insured in Arizona;
 - iii. The vehicle is not a recreational vehicle as defined in A.R.S. § 28-3102;
 - iv. The vehicle is a diesel vehicle over 19,500 pounds GVWR that has been or will be converted to operate on alternative fuel; and
 - v. The vehicle is subject to A.R.S. § 28-4032(A), is a school bus, or a municipal vehicle.
 - c. An additional statement that applicant agrees that, if the Statement of Assurances and the application are not truthful, correct, and complete, the Department may seek recourse in the Superior Court of Maricopa County, Arizona, with the applicant paying all costs of collection of any monies due the Department, including reasonable attorneys' fees.
 - d. A notarized statement as specified in A.R.S. § 41-311(6), under penalty of perjury, that the information contained in the application is truthful, correct, and complete.
 3. A current and complete W-9 Federal tax form (Request for Taxpayer Identification Number and Certification);
 4. A copy of the validated Arizona registration and Arizona title for the vehicle (for a new vehicle, these copies shall be submitted within 15 days of receipt from the state);
 5. A copy of the contract, or purchase order entered into by the applicant, for conversion of the vehicle for which applicant requests a grant;
 6. If the vehicle is not a school bus or a municipal vehicle, a copy of the declarations page from the current liability policy for the vehicle, or other evidence of compliance with A.R.S. § 28-4032(A);
 7. If the conversion has been completed, copies of:
 - a. The MVD Alternative Fuel Certificate issued according to A.R.S. § 28-2416; and

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- b. The invoice or other evidence of the cost of conversion, including:
 - i. The conversion date;
 - ii. A list of all parts used by the conversion vendor;
 - iii. A list of all tasks completed by the conversion vendor, specifying the hours spent on each task and the hourly rate charged; and
 - iv. The conversion kit manufacturer and kit serial number or serial number of conversion parts.
- B.** The Department may require verification of information provided, including original documents.
- C.** The Department shall review an application for completeness and eligibility for a grant.
- D.** If the Department determines that the application is complete through subsection (A)(7), funds are available as specified in R18-2-1302, and the vehicle meets the eligibility requirements in R18-2-1303:
 - 1. The Department shall provide a pre-approval letter to the applicant, stating that the applicant is eligible for a grant under the program when the vehicle is converted as specified in the application and the information specified in subsection (A)(7) is submitted to the Department. The letter shall state the amount of the grant.
 - 2. After the Department provides the letter under subsection (D)(1), the Department shall list the vehicle in the application priority list specified in R18-2-1305 and encumber the grant funds.
 - 3. The applicant shall complete the vehicle conversion and submit all requested information to the Department by the deadline date specified in the pre-approval letter. The deadline date shall be 180 days from the date of the letter. For good cause shown, the Department may grant one extension of the deadline date of up to 45 days.
 - 4. If the applicant fails to comply with the requirements of the pre-approval letter, the Department shall remove the vehicle from the application priority list and unencumber the grant funds.
 - 5. If the Department determines that the applicant has complied with all the requirements of the pre-approval letter, the Department shall notify the applicant in writing that a grant award will be paid to the applicant in the amount according to R18-2-1306.
 - 6. If the conversion is completed before the application is submitted and the vehicle meets the eligibility requirements, the Department shall list the vehicle in the application priority list specified in R18-2-1305 and encumber the grant funds. The Department shall notify the applicant in writing of the grant award determined under R18-2-1306.
- E.** If an application is not complete, the Department shall notify applicant in writing that the application:
 - 1. Cannot be processed because:
 - a. A specified item is missing, or
 - b. The Department requires additional specified action; and
 - 2. Shall be processed after the applicant submits the additional required information and performs any required action specified in the Department's notification to the applicant.
 - 3. If the applicant completes the application, and the Department approves it, the Department shall place the applicant on the application priority list described in R18-2-1305.
- F.** If the Department determines that the vehicle specified in the application is not eligible for a grant under R18-2-1303, the Department shall notify the applicant in writing of the determination, including each reason for ineligibility.

R18-2-1305. Application Priority List

- A.** The Department shall maintain for public inspection an application priority list for approved applications, where grant priority is determined by the date of the contract or purchase order entered into by the applicant.
- B.** If two or more vehicles have the same priority and insufficient funds exist to provide grants for each vehicle, the Department shall use the following computer-based, random-number process to determine the order in which these vehicles are eligible for grant funds:
 - 1. Applications for each vehicle with the same priority shall arranged in a stack, in any order, by the Director.
 - 2. A sequence of random numbers equal in length to the number of applications shall be generated using the random number generator at www.random.org/sform.html. One random number shall be assigned to each of the applications, with the top application receiving the first number in the sequence, continuing down through the stack until the bottom application has been assigned the last random number in the sequence.
 - 3. The applications shall then be ranked, with lower random numbers indicating higher priority.
 - 4. The Director shall notify each of the equal priority applicants of the random number process, to afford them the opportunity to be present when the random numbers are assigned.

R18-2-1306. Grant Amount

The Department shall award grants to qualified applicants within 30 days of the date it notifies the applicant in writing that it will pay applicant a grant award. The Department shall award grants for the lesser of the cost of conversion or \$30,000.

R18-2-1307. Review of Grant Determination

- A.** Any interested party may request a review of:
 - 1. A determination of eligibility for a grant under this Article;
 - 2. An applicant's priority in the awarding of the grants; or
 - 3. The amount of a grant under this Article.

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- B.** If a request for review is made, the funds requested for conversion shall be reserved until the Director's decision after the review under subsection (C).
- C.** A request under subsection (A) shall be made in writing, and received by the Director within 10 business days of the date of the determination. Unless the Director and the interested party agree otherwise, the review shall take place within 10 business days after the Director's receipt of the request. The Director shall arrange the date and location of the review with the interested party at least five business days before the review. The Director shall mail his or her review decision to the interested party within five business days after the review date. The Director's decision after review becomes final unless, within 30 days after applicant's receipt of the review decision, the interested party requests a hearing under R18-1-202.