

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 7. EDUCATION

CHAPTER 1. STATE BOARD OF DIRECTORS FOR COMMUNITY COLLEGES OF ARIZONA

PREAMBLE

- 1. Sections affected:**
Article 7
R7-1-706
- Rulemaking Action:**
Amend
Amend
- 2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rules are implementing (specific):**
Authorizing statutes: A.R.S. §§ 15-1425.1, 15-1425.6
Implementing statutes: A.R.S. §§15-1425.1, 15-1425.6
- 3. The effective date of the rules:**
January 15, 2002
- 4. A list of all previous notices appearing in the Register addressing the final rule:**
Notice of Rulemaking Docket Opening: 5 A.A.R. 2936, August 27, 1999
Notice of Proposed Rulemaking: 5 A.A.R. 3149, September 17, 1999
- 5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
Name: Thomas J. Saad, Executive Director
Address: State Board of Directors for Community Colleges
3225 N. Central Ave., Suite 1220
Phoenix, AZ 85012
Telephone: (602) 255-4037
Fax: (602) 279-3464
- 6. An explanation of the rule, including the agency's reasons for initiating the rule:**
The rule defines the types of community college teaching certificates issued; the minimum requirements for each certificate; the duration and process for renewal of certificates; and, competencies to be addressed in the community college course which is required for certification. The rule is necessary to specifically define certification requirements so that prospective faculty will know what is expected in terms of state certification.
- 7. A reference to any study that the agency relied on in its evaluation of or justification for the proposed rule and where the public may obtain or review the study, all data underlying each study, any analysis of the study and other supporting material:**
None
- 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:**
The amended rule will not diminish any grant of authority.
- 9. The summary of the economic, small business, and consumer impact:**
The amendment will not have any adverse economic impact on small business or consumers.
- 10. A description of the changes between the proposed rules, including supplemental notices, and final rules:**
None

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

No 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:

None

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

No

15. The full text of the rules follows:

TITLE 7. EDUCATION

CHAPTER 1. STATE BOARD OF DIRECTORS FOR COMMUNITY COLLEGES OF ARIZONA

ARTICLE 7. INSTRUCTION, FACULTY, AND STAFF

Section

R7-1-706. Certification Standards

ARTICLE 7. INSTRUCTION, FACULTY, AND STAFF

R7-1-706. Certification Standards

A. Five ~~Six~~ types of community college teaching certificates may be issued

1. The Lifetime Certificate. The Minimum requirements for a Lifetime Certificate are:

a. A Master's degree or higher degree, earned pursuant to subsection (C) of this section with a minimum of 18 graduate semester hours in the field to be taught.

b. The Arizona Community College Course requirement in subsection (D) of this section.

2. The three categories of regular certificates and the minimum requirements for each are as follows:

a. Regular ~~C~~ertificate (~~SIX (6) year term~~) ~~((A)(1)(a))~~:

i. A Master's degree or higher degree, earned pursuant to subsection (C) of this Section with a minimum of 24 semester hours of upper division and/or graduate credit in the ~~field discipline~~ to be taught;

ii. The Arizona Community College Course requirement in subsection (D) of this Section.

b. Regular ~~Occupational I~~ Certificate (~~Six (6) year term~~) ~~((A)(1)(b))~~ (Occupational teaching fields only):

i. A Bachelor's degree, earned pursuant to subsection (C) of this Section with a minimum of three years of directly related occupational experience in the field to be taught;

ii. The Arizona Community College Course requirement in subsection (D) of this Section.

c. Regular ~~Occupational II~~ Certificate (~~Six (6) year term~~) ~~((A)(1)(c))~~ (Occupational teaching fields only):

i. An Associate's degree, earned pursuant to subsection (C) of this Section or a minimum of 64 semester hours and, in addition, a minimum of 5 years of directly related occupational experience in the field to be taught;

or

ii. A valid Arizona license or Arizona certificate in the field to be taught; or valid certification in the field to be taught issued by a national, state, professional, or specialized accrediting body, listed in the 2002 Higher Education Directory, Twentieth Edition, published by Higher Education Publications, Inc. A copy of this directory is available at the office of the State Board of Directors for Community Colleges of Arizona and the office of the Secretary of State.

iii. The Arizona Community College Course requirement in subsection (D) of this Section.

3. A Special ~~C~~ertificate ~~((A)(2))~~ may be issued to an individual employed to teach fewer than 12 credits per semester with the following qualifications:

a. Has a Bachelor's degree or higher degree, earned pursuant to subsection (C) of this Section or a minimum of 5 years of directly related experience in the occupational field to be taught;

b. Has a ~~regular~~ valid Arizona license or a ~~Arizona certificate in the field to be taught; or valid certificate certification~~ in the field to be taught; ~~and issued by a national, state, professional or specialized accrediting body, listed in the 2002 Higher Education Directory, Twentieth Edition, published by Higher Education Publications, Inc. A copy of this directory is available at the office of the State Board of Directors for Community Colleges of Arizona and the office of the Secretary of State,~~ and

c. Has completed ~~or is enrolled in~~ the Arizona Community College Course required by subsection (D) of this Section.

d. An individual who holds a Special ~~C~~ertificate may be granted permission to teach 12 or more credits per semester, if such permission is requested by the Chief Executive Officer or Chief Academic Officer of the college or

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college district and justification is provided that demonstrates it is not feasible for the college to secure the services of a person qualified for a Regular Certificate.

- ~~3.4.~~ An Internship Certificate ~~((A)(3))~~ may be issued to an applicant with the following qualifications:
- a. Has, or is a candidate for, a master's degree in an academic field, or holds, or is a candidate for, a Bachelor's degree in an occupational field, from an institution accredited by one of the Regional Accrediting Associations.
 - b. Applicant has been recommended for, and admitted to, an intern program conducted by an institution accredited by one of the Regional Accrediting Associations.
 - c. Has completed ~~or is enrolled in~~ the Arizona Community College Course required by subsection (D) of this section.
- ~~4.5.~~ A Provisional Certificate ~~((A)(4))~~ may be issued if the individual meets the requirements of the Lifetime Certificate as defined in (A)(1) or Regular Certificates as defined in (A)(42)(a), (A)(42)(b), or (A)(42)(c) but does not meet the Arizona Community College Course requirement in subsection (D) of this Section.
- ~~5.6.~~ Pursuant to A.R.S. 15-1425(3), a District Specific Certificate ~~((A)(5))~~ may be issued as follows:
- a. A community college district may request in writing certification for a person who cannot meet certification requirements in the desired teaching discipline but who has acquired the knowledge and skills to instruct in a specific field through experience or alternative educational experiences and justification is provided that demonstrates it is not feasible for the college to secure the services of a person qualified for a Regular Certificate.
 - b. An individual who holds a District Specific Certificate shall:
 - i. Teach fewer than 12 credits per semester only in the district originating the request for certification.
 - ii. Teach 12 or more credits per semester if requested by the Chief Executive Officer or Chief Academic Officer of the college or college district.
 - iii. Meet the Community College Course requirement in subsection (D) of this Section.
- B.** Community college teaching certificates may be renewed as follows:
1. The Lifetime Certificate as defined in (A)(1) is valid for Life unless revoked.
 - ~~1.2.~~ Regular Certificates as defined in ((A)(42)(a), (A)(42)(b), and (A)(42)(c)) are permanent unless revoked valid for six years and may be renewed. Regular certificates issued prior to the effective date of this section remain valid as issued.
 - ~~2.3.~~ Special Certificates as defined in ((A)(23)) may be renewed at the end of are valid initially for 2 years and may be renewed for a 6-year periods and may be renewed every 6 years thereafter.
 - ~~3.4.~~ Internship Certificates as defined in ((A)(34)) are valid for a period of one semester or six (6) months year and may not be renewed.
 - ~~4.5.~~ Provisional Certificates as defined in ((A)(45)) are valid for 2 years and are nonrenewable may not be renewed.
 - ~~5.6.~~ District Specific Certificates as defined in (A)(56) may be renewed at the end of are valid initially for two years and may be renewed for a six-year periods and may be renewed every 6 years thereafter.
- C.** Degrees or credits shall be earned and received from an institution accredited by one of the Regional Accrediting Associations. Law schools or colleges must be accredited by the American Bar Association. However, degrees and credits earned from a foreign institution shall be evaluated for equivalency to credits earned in an accredited institution on the basis of an analysis provided by a ~~F~~foreign ~~T~~transcript ~~E~~evaluation ~~A~~agency designated by the State Board.
- D.** Community College Course requirement
1. The required Community College Course ~~required~~ for the Lifetime and Regular certificates is a community college course, offered by an Arizona university or community college district. This course shall address the following competencies and shall be of such length and rigor as to warrant the awarding of three semester credit hours:
 - a. History of the Community College;
 - b. Philosophy/Mission/Purpose of the Community College;
 - c. Governance and Organizational Structure of the Arizona Community Colleges;
 - d. Current Community College Issues;
 - e. Student Characteristics and Student Services;
 - f. Financing Arizona Community Colleges;
 - g. Teaching, Learning, and Assessment;
 - h. Curriculum;
 - i. Community College Faculty Roles.
 2. A person who has successfully completed a community-college course at an out-of-state college or university or who has taught one year full-time or two years part-time at a regionally accredited community college outside of Arizona shall be exempt from taking the Arizona course provided the Chief Executive Officer of the college district and the Certification Office of the State Board recommend exemption and the State Board determines that the course and/or experience have provided the person with an orientation to community college teaching substantially equivalent to that provided by the required course.
 3. The Community College Course requirement for the Special Certificate as defined in ((A)(23)) and the District Specific Certificate as defined in ((A)(56)) may be satisfied by completion of an orientation about the Arizona Commu-

nity College system. The method employed shall be determined by the Chief Executive Officer of each community college district and the content shall be based upon section D.1.

4. The State Board shall systematically collect evaluative input from course completers and report the results to the course providers so that course providers and the State Board may continuously improve the quality and effectiveness of the course.
- E. A community college district may establish qualifications in addition to those required by the State Board as long as they do not discriminate on the basis of sex, race, religion, creed, or national origin, and as long as they apply equally to all faculty members in a particular discipline, vocation, or program.
- F. Certification fees (including evaluation and renewal) shall be established by the State Board and the fee schedule made available to any interested person.
- G. Each community college district shall annually, prior to September 1, provide the State Board a report detailing its use of District Specific Certificates during the previous academic year.
 1. The report shall include the following elements:
 - a. A listing of individuals teaching with District Specific Certificates;
 - b. The discipline in which the District Specific Certificate for the individual has been issued;
 - c. The course taught by the individual.
 2. The State Board shall review the results of these reports to determine if the use of District Specific Certificates might affect confidence in transfer or accreditation standards.
- H. An individual may teach a class or classes offered by a community college under the jurisdiction of the State Board without further certification by the State Board where the community college documents that each of the following conditions is simultaneously satisfied:
 1. The individual is a member in good standing of the faculty of a college or university beyond the authority of the State Board.
 2. The college or university is accredited by a Regional Accrediting Association.
 3. The individual is acting within the scope of employment with the college or university.

NOTICE OF FINAL RULEMAKING

TITLE 17. TRANSPORTATION

CHAPTER 1. DEPARTMENT OF TRANSPORTATION ADMINISTRATION

PREAMBLE

1. Sections affected:

R17-1-302
R17-1-307
R17-1-310
R17-1-311
R17-1-312
R17-1-313
R17-1-314
R17-1-315
R17-1-320
R17-1-321
R17-1-331
R17-1-332
R17-1-334
R17-1-335
R17-1-336
R17-1-337

Rulemaking Action:

Repeal
Repeal
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Repeal

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

Authorizing statute: A.R.S. § 28-366

Implementing statutes: A.R.S. §§ 28-101, 28-5610, 28-5618, 28-5619, 28-5625, 28-5708, 28-5852, 28-5856, and 28-5857

3. The effective date of the rules:

January 15, 2002

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

Notice of Rulemaking Docket Opening: 7 A.A.R. 3396, August 3, 2001

Notice of Proposed Rulemaking: 7 A.A.R. 4038, September 14, 2001

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

Name: Kathleen Morley

Address: Motor Carrier Services
Department of Transportation, Motor Vehicle Division
PO. Box 2100, Mail Drop 530M
Phoenix, AZ 85001-2100

Telephone: (602) 712-7441

Fax: (602) 712-6672

E-mail: kmorley@dot.state.az.us

Please visit the ADOT Web site to track progress of this rule and any other agency rulemaking matters at: www.dot.state.az.us/about/rules.

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

In this rulemaking action, the agency is repealing obsolete, unenforced rules. This rulemaking relates to five-year rule review (F-99-0501) approved by G.R.R.C. on May 4, 1999.

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

None

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:

Since the proposed repeal decreases regulation, this rulemaking is exempt from economic impact statement requirements under A.R.S. § 41-1055(D).

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

The agency made no changes between the proposed and final rules.

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

The agency received no comments regarding 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:

None

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

None

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

No

15. The full text of the rules follows:

TITLE 17. TRANSPORTATION

CHAPTER 1. DEPARTMENT OF TRANSPORTATION
ADMINISTRATION

ARTICLE 3. TAXES

Section

R17-1-302. ~~Defining one way haul for purposes of A.R.S. § 28-1599.13~~ Repealed

R17-1-307. ~~Motor vehicle distributor records~~ Repealed

R17-1-310. ~~Motor vehicle fuel distributor report forms~~ Repealed

R17-1-311. ~~Motor vehicle fuel reports from non-distributors~~ Repealed

R17-1-312. ~~Motor vehicle fuel tax on miscellaneous petroleum products~~ Repealed

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- R17-1-313. ~~Motor vehicle fuel tax application to specialty products~~ Repealed
- R17-1-314. ~~Motor vehicle fuel form numbering system~~ Repealed
- R17-1-315. ~~Motor vehicle fuel interstate shipments~~ Repealed
- R17-1-320. ~~Motor vehicle fuel tax exempt to U.S. military forces~~ Repealed
- R17-1-321. ~~Motor vehicle fuel relief agencies~~ Repealed
- R17-1-331. ~~General requirements; invoice preparation; specific invoice information required~~ Repealed
- R17-1-332. ~~Vendor self-consumption of use fuel in use class and light class vehicles~~ Repealed
- R17-1-334. ~~Retention of voided invoices~~ Repealed
- R17-1-335. ~~Licensing~~ Repealed
- R17-1-336. ~~Return and payment of tax~~ Repealed
- R17-1-337. ~~Use fuel and motor carrier bonding process~~ Repealed

ARTICLE 3. TAXES

R17-1-302. ~~Defining one-way haul for purposes of A.R.S. § 28-1599.13~~ Repealed

For purposes of A.R.S. § 28-1599.13, "one way haul" means the transportation of cargo by a motor vehicle in one of the sequences shown in the diagrams set forth below:

	Point of Origin				Point of Destination				Second Point Origin
Example 1.	A	——	Loaded	→	B				
	A	←	Unloaded	——	B				
Example 2.	A	——	Unloaded	→	B				
	A	←	Loaded	——	B				
Example 3.	A	——	Loaded	→	B	——	Unloaded	→	C
	A	←	Unloaded	——	B	←	Loaded	——	C
Example 4.	A	——	Unloaded	→	B	——	Loaded	→	C
	A	←	Loaded	——	B	←	Unloaded	——	C

Each example indicates a round trip, without intermediate additions of cargo to the load or intermediate deliveries of cargo from the load except at the point of origin, point of destination, and the second point of origin.

R17-1-307. ~~Motor vehicle fuel distributor records~~ Repealed

- A.** That pursuant to the provisions of Section 1673, Revised Statutes of Arizona, 1928, every distributor shall keep a record of motor vehicle fuel produced or compounded, sold, delivered, exported or otherwise dealt in or with by said distributor, which shall show:
1. Number of gallons produced or compounded by distributor and dispensed or used from all agencies or sources other than distributor's own service stations, including fuel acquired from others, purchased, used or distributed, and the number of gallons of imported fuel sold in original package or container or other than in original package or container, including fuel sold in other states for export to Arizona., showing name and address of purchaser and number of gallons purchased.
 2. Number of gallons of return sales or recoveries account of sales previously reported. In such case the original sales voucher or tag must be taken up and kept on file for inspection.
 3. Number of gallons brought into Arizona by distributor and sold wholesale ex tax in unbroken original package or container, showing name and address and number of gallons delivered ex tax, in each case.
 4. Number of gallons exported by distributor. Under this heading there shall be shown the date, place of delivery or sale, and name of person to whom sale or delivery was made, for each individual sale or delivery.
 5. Number of gallons sold to United States Government (not including gallonage shown under item (7)).
 6. Number of gallons delivered to own service stations.
 7. Number of gallons delivered from service station to United States Government and included item (6).
 8. The county in which sale or delivery is completed.
- B.** That on or before the 15th day of each month, every distributor shall make up and file with the Superintendent of Division of Motor Vehicles, at his office in the Highway Building, in the City of Phoenix, County of Maricopa, State of Arizona, verified statement showing for the immediately preceding calendar month all data required to be kept upon said record, which statement shall be upon forms prepared and furnished by the Division of Motor Vehicles and designated as Form No. 70-3308.

R17-1-310. ~~Motor vehicle fuel distributor report forms~~ Repealed

To all distributors of Motor Vehicle Fuels: Under authority of Section 1673e RC 1928, as amended by Chapter 16, L.31, 1st S.S., and Chapter 70, L.35, R.S.,

1. Form 70-3308

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2. Form 70-3309
3. Form 70-3310
4. Form 70-3314
5. Form 70-3311
6. Form 70-3312
7. Form 70-3313
8. Form MVF US-433

are hereby prescribed as the forms to be used by distributors in making reports to the vehicle superintendent required in the above mentioned section of the laws of this state. Instructions appearing on reverse side of Form 70-3308 shall be fully complied with beginning with reports for the month of July 1935. Distributors shall take an actual physical inventory at the close of business in June 1935 as provided in instructions.

R17-1-311. ~~Motor vehicle fuel reports from non-distributors~~ Repealed

Pursuant to provisions of Senate Bill 157, Chapter 70, Twelfth Legislature, Regular Session, Laws of Arizona, amending Sections 1673e "Reports of Distributors", 1674e "Reports from Persons not Distributors", and 1675 "Reports from Carriers", requiring immediate reports to the Vehicle Superintendent on forms prescribed by him, of shipments of motor vehicle fuel from a point without the State to a point within this State:

1. Forms MVF 70-3307 and MVF 438 (Import Report) are hereby prescribed by the Vehicle Superintendent for use in making required reports.
2. On and after July 1st, 1935, these forms shall be used in reporting each and every such shipment irrespective of quantity or method of transportation.
3. Prior to July 1st, 1935, each Distributor shall supply the above mentioned forms through the Motor Vehicle Division to refiners and other consignors whom he authorizes to consign motor vehicle fuel into Arizona, and thereafter each Distributor shall, through the Motor Vehicle Division, maintain adequate supplies of the above mentioned forms in the hands of such refiners and other consignors. Each distributor shall require compliance on and after July 1st, 1935, by such refiners and other consignors with instructions set forth on page 1 of these forms, and each Distributor shall identify each imported acquisition on his tax return by the consecutive number of the "Import Report" and each sales invoice or stock transfer, connected with a direct import shipment, shall bear the consecutive number of the "Import Report".
4. On and after July 1st, 1935, each motor carrier transporting such motor vehicle fuel to any one point within this state shall comply with instructions on page 2 of form 70-3307, but if shipment is delivered at more than one point in this state he shall comply with instructions on page 3A, form 70-3307.
5. On and after July 1st, 1935, each person who receives such shipment shall comply with instructions on page 3 of form MVF 70-3307, or if he received only part of such shipment he shall comply with instructions on form MVF 70-3307.

R17-1-312. ~~Motor vehicle fuel tax on miscellaneous petroleum products~~ Repealed

A: Certain liquid petroleum products generally known as specialty products but specifically known by the trade names, viz:

Light solvent	TS16 solvent
Rubber solvent	Rubber solvent "A" TS 13
Thinner 300	TS 11 solvent
Thinner 200	Lacquer diluent "B" TS3
Thinner 410	Lacquer diluent "A" TS2
Stoddard Solvent	Solvent TS1
Paint Thinner 350	Insecticide Base Oil
Mineral spirits	Kleanize
Cleaners naphtha	Salvasal cleaner
Petroleum ether	Thinner No. 7
Eocene	(Paint Thinner) Mineral Spirits
TS28 solvent	Union benzine
Paint base spirits TS27	Cleaning solvent
P & V thinner TS27	Cleaning naphtha

have been taxed on acquisition in this state, unless imported in sealed containers not to exceed one gallon in capacity.

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- B.** Taxation of these products and refund of taxes on proof of non-use in motor vehicles has caused confusion and may possibly result in the refund of the tax on a considerable gallonage on which the tax has not been collected.
- C.** The amount of tax collected is probably exceeded by the cost of collection and refund.
- D.** After test in the State Highway Department Laboratory and after consideration of the wholesale and retail prices at which these products are sold it was decided that the use of same as motor vehicle fuels would not be feasible except by blending.
- E.** The division will still require reports on acquisition by import of these products and will note any abnormal increase in acquisitions.
- F.** The Attorney General holds that the tax may be legally waived on these products.
- G.** Effective on and after July 1, 1939, until further notice:
 1. The five-cent per-gallon license tax on the above-listed products will be exempted.
 2. Such products shall be sold less five-cents per-gallon license tax.
 3. Each distributor and reseller having a supply of these products on hand shall submit a sworn inventory of the same as of June 30, 1939, to the vehicle superintendent.
 4. A refund of the license taxes paid on such inventory will be made on proof of quantities and tax payment satisfactory to the vehicle superintendent.
 5. Acquisitions by import of such products shall continue to be made on regular MVD form 70-3307, the same as provided for Motor Vehicle Fuel Imports.

R17-1-313. ~~Motor vehicle fuel tax application to specialty products~~ Repealed

~~Specialty Products (the base of which is a motor vehicle fuel) compounded or blended IN ANOTHER STATE with some other product or substance other than motor vehicle fuel and not intended for use in a motor vehicle, shall not be considered as taxable under the provisions providing for a tax on motor vehicle fuels upon importation into this state, and sales of such Specialty Products shall be made without the collection of such tax.~~

1. ~~Distributors importing such Specialty Products shall report such importations on Form 70-3307 "Motor Vehicle Fuel Import to Arizona".~~
2. ~~Distributors shall immediately file with this Division a list of such Specialty Products compounded or blended by such distributors.~~
3. ~~No refund will be made to any claimant for refund of motor vehicle fuel tax on invoices for such Specialty Products dated after the effective date of this Order.~~
4. ~~Distributors will be held strictly accountable for the motor vehicle fuel tax on any sales made by such distributors for use of such Specialty Products in a motor vehicle.~~

R17-1-314. ~~Motor vehicle fuel form numbering system~~ Repealed

~~Order assigning new numbers to forms referred to in previously filed general orders~~

1. ~~The Superintendent of Motor Vehicles has under the provisions of A.R.S., Title 41, Chapter 6, filed in the Office of the Secretary of State, General Orders Nos. 24, 25, 36, 39, 43, 54, and 61, wherein is prescribed the use of certain forms, which forms are referred to in the orders by a form number, and~~
2. ~~The Department of Transportation for administrative purpose finds it desirable to adopt a new numbering system for all forms prescribed by the Superintendent.~~
3. ~~That at such time as the present supply of forms is exhausted, a new form number as prescribed below will be used to identify the forms referred to in the above numbered orders.~~

Form as specified	
New Form Number assigned to in orders above	Form Number at immediate left
MVF 425	AHD 70-3307
MVF 438	AHD 70-3315
MVF 1-426	AHD 70-3308
MVF 2-427	AHD 70-3309
MVF 3-428	AHD 70-3310
MVF 5-430	AHD 70-3311
MVF 6-431	AHD 70-3312
MVF 7-432	AHD 70-3313
MVF US 433	AHD 70-3314
577	AHD 70-3304

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R17-1-315. ~~Motor vehicle fuel—interstate shipments~~ Repealed

Rules and procedures applicable when a distributor acquires motor vehicle fuel outside the state and transports same in his own equipment through the state to a destination outside the state.

1. A.R.S. § 28-1519 provides, “motor vehicle fuel moving interstate or foreign commerce, not destined or diverted to a point within this ... shall not be subject to the payment of license taxes required by this Article”.
2. Some distributors as private carriers transport in one continuous trip their own motor vehicle fuel in their own equipment from a point without the state, through the state to a point without the state, which motor vehicle fuel being transported is not subject to the license tax because of the provisions of A.R.S. § 28-1519.
3. A.R.S. § 28-1503 provides that every distributor shall file with the superintendent on forms prescribed and furnished by the superintendent a true and verified statement showing the total number of gallons of motor vehicle fuel acquired during the preceding calendar month and other and further data or information the superintendent requires.
4. The following rules and procedures will govern when a distributor acquires motor vehicle fuel outside the state and transports the same through the state for delivery to a point outside the state:
 - a. Motor Vehicle Division Form 70-3307 will be executed and handled in the same manner as is required in connection with motor vehicle fuel imported into the state. The point of destination to be shown on the form will be the place outside the state where the fuel is to be delivered.
 - b. When the vehicle transporting motor vehicle fuel leaves the state through a motor vehicle checking station located at not more than 400 yards from the state line, the carrier will surrender Page 3 of Form 70-3307 (Consignee Report) to the officer on duty at the checking Station. The officer will make proper notation on the form indicating that the shipment covered by the form was transported to a point outside the state and then forward same to the office of the Motor Vehicle Division.
 - c. When a motor vehicle transporting motor vehicle fuel leaves the state at a point other than that referred to in paragraph (b) above for a destination in another state, the distributor will attach to Page 3 of Form 70-3307 satisfactory proof that the motor vehicle fuel was transported out of the state.
 - d. When a motor vehicle transporting motor vehicle fuel leaves the state for a destination in Mexico at a point other than that referred to in paragraph (b) above, the distributor will attach to Page 3 of Form 70-3307 a Proof of Export Form certified by the Collector of Customs or, in lieu thereof, may have the Collector of Customs indicate on said Page 3 of Form 70-3307 that the motor vehicle fuel was exported into Mexico.
 - e. As a part of the regular monthly report, the distributor will submit on a separate sheet of Schedule 3 (Form MVF 3-428) the required information concerning all Forms 70-3307 covering shipments of a type dealt with in this order. It should be indicated on this particular Schedule 3 that the motor vehicle fuel is exempt from the Arizona license tax because of the provisions of A.R.S. § 28-1519. The distributor shall not include the gallons on this particular Schedule 3 in the total gallonage shown on line 3 of Schedule 1 (Form 70-3308) of the monthly report.

R17-1-320. ~~Motor vehicle fuel—tax exempt to U.S. military forces~~ Repealed

A. Section 1. Section 66-318, Arizona Code of 1939, is amended to read: Section 66-318. LICENSE TAX EXEMPTIONS. Motor vehicle fuel in interstate or foreign commerce, not destined or diverted to a point within this state or motor vehicle fuel sold to the United States Armed Forces for use in ships or aircraft, or for use outside this state shall not be subject to the payment of license taxes required in this Article.

1. The above law became effective 26 June 1952.
2. Under the provisions of the above law, as amended, no exemption of motor vehicle fuel tax will be allowed on purchases by the United States except as stated in the law.

B. Effective 26 June 1952, claims for exemption of tax by reason of sale to the Armed Forces of the United States for the purposes specified will be supported by certificates of the purchasing agency that the motor vehicle fuel is purchased by the United States Armed Forces for the purposes covered in the above law. U.S. Standard Forms 1094 (U.S. Government Tax Exemption Certificate) will not be acceptable.

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1. The certificate may be in the following form:

ARIZONA MOTOR VEHICLE FUEL GAS EXEMPTION ON SALES TO THE UNITED STATES ARMED FORCES	
City or Station: Date:	
I certify that the motor vehicle fuel described below is purchased for the exclusive use of the United States (designation of Armed Force) for use (in ships, aircraft, outside Arizona). It is understood and agreed that if the motor vehicle fuel purchased under this exemption certificate at prices exclusive of the Arizona motor vehicle fuel tax is used otherwise than as designated above, or is resold to employees or others, the Arizona motor vehicle fuel tax on such gallonage diverted from designated use will be transmitted to the Arizona Division of Motor Vehicles under the provisions of Section 10 of the Act of 16 June 1936 (Pub law No. 686, 74th Congress) as amended.	
THIS CERTIFICATE COVERS	
Brand Acquired from (Name of vendor) as evidenced by Arizona form AHD 70 3307 (old Form 425) Contract No. Serial No. of aircraft	Gallons <hr/> Signature Title and Rank of Officer

2. The above form may be reproduced locally or copies will be furnished by this Division upon request.

- C.** Common or contract motor carriers transporting motor vehicle fuel for the Armed Forces of the United States into Arizona (purchased by the United States Armed Forces F.O.B. out of state) must carry copy of the U.S. Government bill of lading, as well as Arizona Form AHD 70 3307 (old Form 425) showing the following:
1. Name of Armed Service to which delivery is being made.
 2. Number of U.S. Government bill of lading covering the shipment.

R17-1-321. Motor vehicle fuel relief agencies Repealed

- A.** Federal Emergency Relief Administration grants become state monies as soon as they are received for by the Governor.
- B.** The following relief agencies and organizations are not exempt from the payment of the Arizona Motor Vehicle Fuel Tax:
1. Public Relief Agencies created by the legislature of this state, such as state and County Boards of Public Welfare;
 2. Federal Emergency Relief Administration of Arizona;
 3. All other relief agencies or organizations depending upon allotments of funds from the Federal Emergency Relief Administration.
- C.** All distributors are directed to observe the provisions of this order.

R17-1-331. General requirements; invoice preparation; specific invoice information required Repealed

- A.** Except as otherwise provided in subsection (B) of this rule, all vendors shall, upon each sale or transfer of use fuel in any manner, record on the invoice required by A.A.C. R17-1-330 the date of sale and the number of gallons sold and mark the applicable spaces in the information block
- B.** Sales of use fuel delivered into the fuel tank(s) of light class motor vehicles, as defined in A.R.S. § 28-1551(7), need not be recorded upon such an invoice unless specifically requested by the purchaser, subject to the provisions of R17-1-334(B).
- C.** In addition to the requirements of subsection (A) of this rule,
1. If the use fuel is delivered into the fuel tank of a use class motor vehicle, as defined in A.R.S. § 28-1551(13), and the use fuel tax is collected by the vendor, the vendor shall include on the invoice the name of the purchaser and Arizona use fuel tax account number as reflected on the purchaser's valid Arizona use fuel cab card as defined in A.R.S. § 28-1558. If, however, a use fuel tax account number is not presented when placing use fuel license plate number and state of registration of the vehicle into which the fuel was delivered must be recorded by the vendor on the invoice, and, if available, the name of the purchaser or the name of any operating entity as may be displayed on the exterior of the vehicle.
 2. If the use fuel is delivered into the fuel tank of a use class motor vehicle, and the use fuel tax is not collected by the vendor, then the invoice must reflect the name and use fuel tax account number of the purchaser as reflected on the purchaser's use fuel cab card. If the name and account number of the purchaser as reflected on the use fuel cab card is not recorded on the invoice, then the vendor will be presumed liable for the use fuel tax relating to that sale; or, if in the event the use fuel was sold without the fuel tax being collected on the basis of a use fuel single trip permit pursuant to A.R.S. §§ 28-1555(B) and 28-1559(B), the pink copy of that use fuel single trip permit must be attached to the vendor's file copy of the invoice. In addition to the requirements of R17-1-330, the invoice must be cross-referenced to the single trip permit by indicating the permit number instead of, and in place of the use fuel tax license number, in that area of the invoice reserved for the purchaser's use fuel tax license number, or the vendor will be presumed liable for the use fuel tax relating to that sale.

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3. If the use fuel is sold and delivered into any receptacle other than a vehicle fuel tank, the use fuel tax is not to be collected by the vendor however, the approved invoice must reflect the purchaser's name and use fuel tax account number if applicable, and the type of receptacle into which the fuel was sold or delivered must be reflected in section "C" of the "Arizona Use Fuel Tax Information Block" on the invoice, or the vendor will be presumed liable for the use fuel tax relating to that sale.

R17-1-332. ~~Vendor self consumption of use fuel in use class and light class vehicles~~ Repealed

- ~~A. When a vendor delivers use fuel into a use class motor vehicle for which the vendor holds a valid use fuel cab card, an invoice must be completed as a tax collected sale.~~
- ~~B. A vendor who owns or operates a light class motor vehicle must transfer title to any use fuel intended to be placed into such light class motor vehicle to the restricted vendor's entity, as defined in A.R.S. § 28-155-1 (10), prior to such placement, and recording the transfer on the invoice provided in A.A.C. R 17-1-330 as a bulk withdrawal sold to the restricted vendor's entity.~~

R17-1-334. ~~Retention of voided invoices~~ Repealed

~~If an invoice is voided because of an error in recording the required information, the vendor shall retain the original and all copies of the voided invoice for audit purposes for not less than three years following the date of the voided invoice, or until an audit has been made encompassing the voided invoice, whichever comes first.~~

R17-1-335. ~~Licensing~~ Repealed

- ~~A. A carrier operating a motor vehicle that is a tractor, a road tractor, a truck tractor, a truck having more than two axles, or a passenger carrying vehicle designed to seat more than 20 occupants that is powered by use fuel and is registering in this State or accorded proportional registration or registration reciprocity with this state for the motor vehicles must, except as provided in subsection (C), obtain a use fuel tax license and cab card prior to operating on Arizona public highways.~~
- ~~B. A carrier operating motor vehicles in excess of 26,000 pounds declared gross vehicle weight and registering in this state or accorded proportional registration or registration reciprocity with this state for the motor vehicles and who are also subject to the weight fee under A.R.S. § 28-206 must, except as provided in subsection (C), obtain a motor carrier tax license and cab card prior to operating on Arizona public highways.~~
- ~~C. Any carrier or person who operates a motor vehicle and obtains a non-resident single trip permit under A.R.S. § 28-501.01, or a 30-, 60- or 90-day permit pursuant to A.R.S. § 28-501 (B) may purchase a use fuel and/or motor carrier tax trip permit for each trip in this State instead of licensing with the Director.~~
- ~~D. Application for each use fuel and/or motor carrier license shall be made to the Department in writing upon forms prescribed and furnished by the Department, incorporated herein by reference and on file in the Office of the Secretary of State. All information required on the application shall be completed and shall be submitted with a \$10.00 non-refundable filing fee for each use fuel and/or motor carrier license to the Arizona Department of Transportation, Motor Vehicle Division, P.O. Box 2100, Mail Drop 234M, Phoenix, Arizona 85001.~~
- ~~E. The Department shall issue a cab card to qualified licensed carriers. The cab card shall be applied for on the forms prescribed by the Department and shall be valid, unless canceled or revoked, for three calendar years. The cab card application form is incorporated herein by reference and on file in the Office of the Secretary of State. Any cab card issued after January 1 shall expire on December 31 of the expiration year. The enforcement date shall be established by the Director.~~

R17-1-336. ~~Return and payment of tax~~ Repealed

- ~~A. Reporting period definitions. The carrier reporting period shall be related to the amount of the Use Fuel and/or Motor Carrier Tax liability and the compliance record of the licensee. Any licensee whose average monthly tax liability for Use Fuel or Motor Carrier Tax, computed over a twelve-month period, exceeds the filing limits of the licensee's current filing status shall be required to change its reporting period based on the new average monthly tax liability. Such change in the reporting period shall coincide with the beginning of a new reporting period. The carrier shall have the same reporting period for each tax. The report shall be made to the Department upon the forms prescribed and furnished by the Department, incorporated herein by reference, and on file in the Office of the Secretary of State. The reporting periods are:~~
- ~~1. Monthly— for a calendar month.~~
 - ~~2. Quarterly— for calendar quarters beginning January 1st, April 1st, July 1st and October 1st.~~
 - ~~3. Semi-annually— for six (6) calendar months beginning January 1st, and July 1st.~~
 - ~~4. Annually— for twelve (12) calendar months beginning January 1st.~~
- ~~B. Reporting period limits. The reporting period's tax liability limits for each tax are:~~
- ~~1. To file monthly, an account must have \$1,000 or more average monthly tax liability.~~
 - ~~2. To file quarterly, an account must have at least \$200 but less than \$1,000 average monthly tax liability.~~
 - ~~3. To file semi-annually, an account must have less than \$200 average monthly tax liability.~~
 - ~~4. To file annually, an account must have less than \$10.00 average monthly tax liability.~~
 - ~~5. The reporting period shall be based on the tax account with the highest average monthly tax liability.~~
- ~~Any licensee wishing to file on other than the reporting limits established by this subsection must first make an application in writing to the Director. If such licensee has complied with all applicable provisions of the Use Fuel and/or~~

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Motor Carrier Tax Act for the six months immediately preceding the application and shows good cause, then such licensee shall be allowed to file under the requested filing period.

C. Failure to comply.

1. If a licensee filing on other than a monthly basis fails to comply with the reporting requirements, the requirements for payment of tax, interest, penalty or other fees, or other requirements established under the Use Fuel and/or Motor Carrier Tax laws, without reasonable cause, such licensee may be required by the Director to file on a monthly basis. The Director shall notify the licensee of any such change in the filing requirements.
2. Any licensee that has complied with all provisions of the Use Fuel and/or Motor Carrier Tax laws for a period of six (6) months after such licensee was required to file monthly, may make application to be allowed to file on other than a monthly basis.

D. Failure to receive report form. If the licensee fails to receive an authorized report form, he must make a written report to the Department stating all information required on the prescribed form. The carrier shall file the report, together with a remittance payable to the Motor Vehicle Division for the amount of tax, penalty, interest or other fees due, on or before the due date of the return. The remittance and tax information will be accepted instead of a report on the prescribed form.

R17-1-337. Use fuel and motor carrier bonding process Repealed

A. Bond amount calculation.

1. The amount of bond required by the Department for each tax shall be calculated by determining the average monthly tax liability for the established reporting period and multiplying that average monthly tax liability by the following factors:
3 times the average monthly tax liability for monthly reporting.
5 times the average monthly tax liability for quarterly reporting.
8 times the average monthly tax liability for semi-annual reporting.
14 times the average monthly tax liability for annual reporting.
The surety bond will be rounded to the nearest thousand dollars.

EXAMPLE: An average monthly tax liability computed for twelve months is \$575. The average tax liability (\$575) is multiplied times 5 (for the quarterly factor) equaling \$2,875. The bond amount required would be \$3,000 (2,875 rounded to nearest thousand). The minimum bond amount for each tax shall be \$500. If the bond amount as computed under subsection (A), paragraph (1) of this Section is less than \$500, the bond amount required shall be \$500.

2. A carrier must provide continuous bond coverage for the period upon which an account may be subject to audit. Should a bond lapse, cash in an amount equal to the lapsed bond must be deposited with the Director until a new surety bond is issued to cover the lapsed period or until the period without bond has been audited or is no longer subject to audit.

B. Exceptions. The bond amount may be increased or decreased as necessary based upon the carrier's preceding report period, the reporting compliance record, or the payment history of the account. The Department will establish the new bond amount and notify the account in writing.

C. Average monthly tax liability. For the purposes of this Section, the average monthly tax liability of a licensee shall equal the tax due for a reporting period divided by the number of months in the report period.

EXAMPLE: \$1,575 tax due in a quarter divided by 3 months equals \$525 average monthly tax liability.

NOTICE OF FINAL RULEMAKING

TITLE 17. TRANSPORTATION

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

PREAMBLE

1. Sections Affected:

R17-4-306

Rulemaking Action:

Amend

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

Authorizing statute: A.R.S. § 28-366

Implementing statutes: A.R.S. §§ 28-2292 through 28-2295

3. The effective date of the rule:

January 15, 2002

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

Notice of Rulemaking Docket Opening: 6 A.A.R. 4201, November 3, 2000

Notice of Recodification: 7 A.A.R 3479, August 10, 2001

Notice of Proposed Rulemaking: 7 A.A.R 4046, September 14, 2001

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

Name: Brent P. Heiss, Rule Analyst

Address: Administrative Rules Unit
Department of Transportation, Mail Drop 507M
3737 N. 7th Street, Suite 160
Phoenix, AZ 85014-5079

Telephone: (602) 712-8449

Fax: (602) 241-1624

E-mail: bheiss@dot.state.az.us

Please visit the ADOT Web site to track progress of this rule and any other agency rulemaking matters at www.dot.state.az.us/about/rules.

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

The rule provides for the biennial \$8 fee that covers administrative costs of the program, as authorized under A.R.S. § 28-2294(D), and meets the requirements described under A.R.S § 41-1008. The current rule must be revised since the implementing statutes have been renumbered, as noted in the proposed agency action of the five-year review report (F-98-0401) and approved by the Governor's Regulatory Review Council on May 5, 1998. The agency is revising this Section to reflect current program requirements and publishing styles of G.R.R.C. and the Secretary of State.

Note: Since the initiation of rulemaking for this Section, the agency has recodified 17 A.A.C. This Section was formerly designated R17-4-422.

7. A reference to any study that the agency relied on its evaluation 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 rule informs the public of the fee for nonresident daily commuters who are exempt from certain requirements that apply to resident motor vehicle registration. The \$8 fee is unchanged from the previous rule and covers a 2-year period. The application and identification prescribed for the nonresident daily commuter privilege allows for evaluation of the impact of nonresident commuter vehicles on air quality and impact to highway infrastructure and assists public safety enforcement through better identification of motor vehicles.

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

The requirements of the rule are unchanged, only revised to conform with the requirements of both the Secretary of State and the Governor's Regulatory Review Council.

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

The agency received no comments during 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 rule:

None

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

Not applicable

15. The full text of the rule follows:

TITLE 17. TRANSPORTATION

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

ARTICLE 3. VEHICLE REGISTRATION

Section

R17-4-306. ~~Nonresident daily commuter fee~~ Daily Commuter Fee

ARTICLE 3. VEHICLE REGISTRATION

R17-4-306. ~~Nonresident daily commuter fee~~ Daily Commuter Fee

~~The Department shall charge any nonresident daily commuter, as defined in A.R.S. § 28-361, a fee of \$8.00 upon filing an application form, incorporated herein by reference and on file with the Secretary of State's Office, to recover the cost of administering the Article.~~

A nonresident daily commuter shall pay a fee of \$8 for each motor vehicle exempt from registration under A.R.S. § 28-2294.

NOTICE OF FINAL RULEMAKING

TITLE 17. TRANSPORTATION

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

PREAMBLE

- | | |
|-------------------------------------|----------------------------------|
| 1. <u>Sections Affected:</u> | <u>Rulemaking Action:</u> |
| R17-4-308 | Repeal |
| R17-4-308 | New Section |
- 2. The specific authority for the rulemaking, including both the authorizing statute (general) and the statutes the rule is implementing (specific):**
- Authorizing statute: A.R.S. § 28-366
Implementing statute: A.R.S. §§ 28-2410, 28-2511, and 26-318
- 3. The effective date of the rule:**
- January 14, 2002
- 4. A list of all previous notices appearing in the Register addressing the final rule:**
- Notice of Rulemaking Docket Opening: 6 A.A.R. 4201, November 3, 2000
Notice of Proposed Rulemaking: 7 A.A.R. 2315, June 8, 2001
Notice of Recodification: 7 A.A.R. 3479, August 10, 2001
Notice of Supplemental Proposed Rulemaking: 7 A.A.R. 4249, September 28, 2001
- 5. The name and address of agency personnel with whom persons may communicate regarding the rulemaking:**
- | | |
|------------|--|
| Name: | Ellen Damron, Rules Analyst; |
| Address: | Arizona Department of Transportation
Administrative Rules Unit, Mail Drop 507M
3737 N. 7th Street, Suite 160
Phoenix, AZ 85014-5079 |
| Telephone: | (602) 712-6722 |
| Fax: | (602) 241-1624 |
| E-mail: | edamron@dot.state.az.us |
- or

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Name: Jean Agan, Program Manager
Address: Arizona Department of Transportation
Motor Vehicle Division
Customer Service, East Region
1703 E. Larkspur Lane
Tempe, AZ 85271
Telephone: (480) 425-0701
Fax: (480) 425-0705
E-mail: jeagan@dot.state.az.us

Please visit the ADOT Web site to track progress of this rule and any other agency rulemaking matters at: www.dot.state.az.us/about/rules.

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

This rule explains motor vehicle license plate issuance for tribal or government-owned motor vehicles; foreign governments engaged in official business within the state; providers engaged only in emergency services with ambulance, fire fighting and rescue equipment; and nonprofit organizations, approved by the Department of Emergency and Military Affairs (DEMA), who operate certain emergency vehicles for disaster or search and rescue operations. Vehicle license plates for exempted entities were previously issued for a five-year period without a year designation. The Motor Vehicle Division issues license plates to exempted entities, as prescribed by A.R.S. § 28-2511, and in the form prescribed in Arizona Revised Statutes, title 38, Chapter 3, Article 10. The existing rule does not reflect the Division's current practices for government motor vehicle registration and license plate issuance, or changes in statutory language. This rulemaking arose from proposed agency action in the 5-year review report, F-98-0401, approved by the Governor's Regulatory Review Council on May 5, 1998. This rule revision will also update language to conform to current standards of the Governor's Regulatory Review Council and the Secretary of State.

Note: Since the initiation of rulemaking on this Section, the agency has recodified 17 A.A.C. This Section was formerly designated R17-4-252.

7. A reference to any study that the agency relied on its evaluation 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:

This rule does not diminish the authority of any political subdivision of this state.

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

This rule does not directly impact the economic condition of the general driving public or small business. The rule extends the courtesy of no-fee registration and license plates to state government and its subdivisions; tribal entities; nonprofit-operated emergency vehicles, providers of ambulance, fire fighting and rescue services only engaged in emergency services; foreign governments, and their official representatives. The Division absorbs the costs for these motor vehicle license plates. The rule provides a cost-avoidance to government entities that perform official duties, DEMA-approved nonprofit organizations, and providers that operate only emergency services.

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

Minor grammatical and stylistic changes were made at the request of the Governor's Regulatory Review Council staff.

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

The agency received no comments during 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:

None

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

None

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

No

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15. The full text of the rule follows:

TITLE 17. TRANSPORTATION

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

ARTICLE 3. VEHICLE REGISTRATION

Section

R17-4-308. ~~State-owned vehicles—5 year plate validity~~ Official Vehicle License Plates

ARTICLE 3. VEHICLE REGISTRATION

R17-4-308. ~~State-owned vehicles—5 year plate validity~~ Official Vehicle License Plates

Plates furnished free of charge by the Motor Vehicle Division for a vehicle owned by the state of Arizona or political subdivision thereof shall be issued for a 5 year period and will not bear a year designation. During each intervening 4 year period, annual issuance of tabs and new registration cards will not be required. Such “no fee” license plates will be furnished to the state of Arizona or political subdivision thereof in the required number requested together with a like number of blank registration card forms. The assignment of plates to such vehicles and the preparation of registration cards corresponding thereto will be the responsibility of the person having custody thereof. In the event of sale of any such vehicle, the plate assigned thereto shall be removed but may be reassigned to another vehicle.

- A.** The Motor Vehicle Division shall issue license plates without charge for official vehicles owned by any entity listed in A.R.S. § 28-2511(A).
- B.** A license plate issued under A.R.S. § 28-2511 has no expiration date.
- C.** An entity listed in A.R.S. § 28-2511(A) may transfer a license plate to another vehicle the entity owns.
- D.** A person who has custody of vehicles governed by A.R.S. § 28-2511 shall:
- 1.** Complete title and registration procedures as prescribed under A.R.S. Title 28, Chapter 7;
 - 2.** Display each license plate as prescribed by A.R.S. § 28-2354; and
 - 3.** Maintain a record of each license plate transfer that includes:
 - a.** The date of the transfer;
 - b.** The year, make, and model of the vehicle, and
 - c.** The vehicle identification number (VIN) for each car involved in the transfer.

NOTICE OF FINAL RULEMAKING

TITLE 18. ENVIRONMENTAL QUALITY

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

PREAMBLE

- | | |
|------------------------------------|---------------------------------|
| <u>1. Sections Affected</u> | <u>Rulemaking Action</u> |
| R18-2-715 | Amend |
| R18-2-715.01 | Amend |
- 2. The specific authority for the rulemaking, including both the authorizing statute (general and the statutes the rules are implementing (specific):**
Authorizing and implementing statutes: A.R.S. §§ 49-104(A)(11), 49-404, 49-425, and 49-426
- 3. The effective date of the rules:**
January 15, 2002
- 4. List of all previous notices appearing in the register addressing the proposed rule:**
Notice of Rulemaking Docket Opening: 7 A.A.R. 2776, June 29, 2001
Notice of Rulemaking Docket Opening: 7 A.A.R. 4098, September 14, 2001
Notice of Proposed Rulemaking: 7 A.A.R. 4048, September 14, 2001
- 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
3033 N. Central Avenue
Phoenix, AZ 85012-2809

Telephone: (602) 207-2230. If you are outside the (602) area code dial 1(800) 234-5677

Fax: (602) 207-2366

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

Summary. The Arizona Department of Environmental Quality has incorporated source-requested reductions in emission limits applicable to a copper smelter, located in San Manuel, which has been temporarily shut down. The smelter, currently owned and operated by BHP Billiton (BHP), has been maintained in a cold start-up (standby) mode since June 24, 1999, because of low copper prices.

R18-2-411(A) requires major sources of sulfur dioxide (SO₂) located in SO₂ nonattainment areas that have not operated for more than 24 consecutive months to submit certain demonstrations and plans to the Director prior to resumption of operations. To meet the requirements of R18-2-411(A)(1), the source completed an air quality impact analysis in the first half of 2001 demonstrating that the source will not cause or contribute to a violation of the National Ambient Air Quality Standards (NAAQS) for SO₂. BHP conducted the analysis at much lower emissions limits than the limits contained in R18-2-715. Subsequently, BHP applied for and received a permit revision to incorporate these more stringent emission limits in the facility's permit. Corresponding changes have been made to R18-2-715 and R18-2-715.01. If the owner of the source decides to resume operations, compliance with the new emission limits will result in greater protection of air quality in the area. The revised rules will be submitted to the U.S. Environmental Protection Agency as a federally enforceable control measure in a State Implementation Plan revision and redesignation to attainment request for the San Manuel SO₂ nonattainment area.

Additional amendments to R18-2-715.01 have been made to update references to current federal quality assurance procedures and to remove outdated requirements for submittal of compliance schedules by subject sources. These changes have no substantive impact on the regulated sources.

7. A reference to any study that the agency proposes to rely 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:

Not applicable

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 the state:

Not applicable

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

This is primarily a source-specific rulemaking pertaining to a copper smelter that temporarily curtailed operations in 1999. The BHP facility, located in the San Manuel area in Pinal County, is approximately 40 miles northeast of Tucson. The San Manuel area is designated nonattainment for sulfur dioxide. This rule incorporates source requested emission limits for sulfur dioxide. None of these limits generate impacts.

BHP's representatives indicated that over \$60 million was spent on upgrading and rebuilding the facility during the current curtailment period. These expenditures, however, represent sunk costs and are not directly related to this rule. In anticipation of re-initiating operations, BHP incurred substantial costs for maintaining the facility in a cold start-up mode. These costs are also sunk costs.

If BHP re-initiates operations, employment potentially would increase from the current 200 that are maintaining the facility in the cold start-up mode to approximately 1,100. Based on prior budget data from the facility's representatives, of the approximately 900 jobs that would be created, about 80% would earn an average of \$14 per hour with the remaining personnel earning a higher rate, e.g., engineers, department heads, and front-line supervisors. Personnel include employees in feed and flash, hot metals, tank house, rod plant, maintenance services, and other divisions.

Although these changes could potentially impact other facilities, ADEQ determined that there are no direct impacts to other sources, except for R18-715.01(P) that changes record retention from two to five years. ADEQ considers this impact to be minimal because the storage infrastructure is already present.

Additional amendments that are applicable to all sources update references to federal quality assurance procedures and remove outdated requirements for submittal of compliance schedules by subject sources. These changes do not create costs or benefits since sources have previously complied with these new requirements, this rule merely codifies industry practice. Any source expenditures to comply with these sections have already been incurred and are not attributed to this current rulemaking.

Revisions include:

R18-2-715.01(K) was amended to change language and references to conform to current federal quality assurance and emission monitoring requirements. These changes correspond to current practice. All compliance costs represent sunk costs.

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R18-2-715.01(Q) through (S) were deleted because all sources either previously met these requirements or they have shut down. All compliance costs represent sunk costs.

R18-2-715.01(R) was added for BHP. This section specifies how compliance with cumulative occurrence and fugitive emission limits are to be determined. This requirement does not represent an impact since the rule change is consistent with the facility's required permit practice.

R18-2-715.01(S) was added for BHP. This section specifies requirements for emissions monitoring systems. This requirement does not represent an impact since the rule change is consistent with the facility's required permit practice.

ADEQ does not expect direct impacts (costs or benefits) to be incurred by itself or other state agencies, political subdivisions, or private businesses. Additionally, ADEQ does not anticipate a direct impact on state revenues or on private and public employment and payrolls.

Cost/Benefit Analysis

This rule is necessary for a currently non-operational smelter to begin operating again but with much lower emissions than it was previously operated. As previously stated, this smelter is in a nonattainment area, and based on the analysis done under R18-2-411, operation of the smelter under the new emission limits will not endanger ambient air quality standards. In addition, as mentioned above, operation of the smelter would have a significant positive economic impact on the San Manuel area. Based on these factors, ADEQ believes that the benefits of this rulemaking outweigh the costs.

Impact on Small Business.

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. For purposes of a specific rule, an agency may define small business to include more persons if it finds that such a definition is necessary to adapt the rule to the needs and problems of small businesses and organizations." Based on the number and size of Arizona copper smelters, ADEQ has determined that this rule does not impact any small businesses.

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

The changes to the proposed rule are shown below with strike out (~~strike-out~~) and underline. There were few substantive changes and none that were substantial. The following changes were made between the proposed and final rules:

R18-2-715. Standards of Performance for Existing Primary Copper Smelters; Site-specific Requirements

- A. No change
- B. No change
- C. No change
- D. No change
- E. No change
- F. Except as provided in a consent decree or a delayed compliance order, ~~no~~ the owner or operator of any primary copper smelter shall not discharge or cause the discharge of sulfur dioxide into the atmosphere from any stack required to be monitored by R18-2-715.01(K) in excess of the following:
 - 1. For the copper smelter located near San Manuel, Arizona at latitude 32°36'58"N and longitude 110°37'19"W:
 - a. Annual average emissions, as calculated ~~pursuant to~~ under R18-2-715.01(C), shall not exceed 1,742 pounds per hour.
 - b. The number of three-hour average emissions, as calculated ~~pursuant to~~ under R18-2-715.01(C), shall not exceed n cumulative occurrences in excess of E, the emission level, shown in the following table in any compliance period as defined in R18-2-715.01(J):

n, Cumulative Occurrences	E, (lb/hr)
0	9803
1	8253
2	7619
4	6072
7	5660
12	4922

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20	4515
32	4272
48	3945
68	3727
94	3568
130	3419
180	3253
245	3101
330	2958
435	2831
560	2712
710	2615
890	2525
1100	2440
1340	2366
1610	2290
1910	2216
2240	2142

- 2. No change
- 3. No change
- 4. No change
- 5. No change
- 6. No change

G. Except as provided in a consent decree or a delayed compliance order, ~~no~~ the owner or operator of ~~any primary copper smelter~~ the copper smelter located near San Manuel, Arizona at latitude 32°36'58"N and longitude 110°37'19"W shall not discharge or cause the discharge of fugitive sulfur dioxide into the atmosphere in excess of the following:

- 1. ~~For the copper smelter located near San Manuel, Arizona at latitude 32°36'58"N and longitude 110°37'19"W:~~
 - a. ~~1.~~ Annual average emissions, ~~as calculated pursuant to~~ under R18-2-715.01(R) shall not exceed 715 pounds per hour for converter roof fugitive emissions; ~~and~~
 - b. ~~2.~~ The number of three-hour average emissions for converter roof fugitive emissions, ~~as calculated pursuant to~~ under R18-2-715.01(R) shall not exceed n cumulative occurrences in excess of E_f, the emission level, shown in the following table in any compliance period ~~as defined in R18-2-715.01(J):~~

n, Cumulative Occurrences	E _f (lb/hr)
0	<u>4462</u>
1	<u>4299</u>
2	<u>4222</u>
4	<u>4017</u>
7	<u>3867</u>
12	<u>3460</u>
20	<u>3179</u>
32	<u>3000</u>
48	<u>2827</u>
68	<u>2649</u>
94	<u>2523</u>
130	<u>2361</u>
180	<u>2218</u>
245	<u>2072</u>
330	<u>1923</u>
435	<u>1785</u>

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560	<u>1644</u>
710	<u>1517</u>
890	<u>1402</u>
1100	<u>1300</u>
1340	<u>1208</u>
1610	<u>1121</u>
1910	<u>1039</u>
2240	<u>957</u>

2. Reserved

R18-2-715.01. Standards of Performance for Existing Primary Copper Smelters; Compliance and Monitoring

- A. The cumulative occurrence and emission limits specified in R18-2-715(F) shall apply to the ~~sum~~ total of sulfur dioxide emissions from the smelter processing units and sulfur dioxide control and removal equipment, but not including uncapured fugitive emissions and ~~those~~ emissions due solely to the use of fuel for space heating or steam generation.
- B. ~~The owner or operator shall include~~ Periods ~~periods~~ of malfunction, startup, shutdown or other upset conditions ~~shall not be excluded~~ when determining compliance with the cumulative occurrence or annual average emission limits specified in R18-2-715(F) or (G).
- C. ~~The owner or operator shall determine~~ Compliance ~~compliance~~ with the cumulative occurrence and emission limits contained in R18-2-715(F) ~~shall be determined~~ as follows:
 - 1. ~~The owner or operator shall calculate~~ Annual ~~annual~~ average emissions ~~shall be calculated~~ at the end of each day by averaging the emissions for all hours measured during the compliance period defined in subsection (J) ending on that day. An annual emissions average in excess of the allowable annual average emission limit ~~will be considered~~ is a violation of R18-2-715(F) if either:
 - a. The annual average is ~~larger~~ greater than the annual average computed for the preceding day; or
 - b. The annual averages computed for the five preceding days all exceed the allowable annual average emission limit; ~~and~~
 - 2. ~~The owner or operator shall calculate a~~ Three ~~three-hour~~ emissions ~~averages shall be calculated~~ average at the end of each clock hour by averaging the hourly emissions for the preceding three consecutive hours ~~whenever provided~~ each such hour was measured in accordance with according to the requirements ~~contained~~ in subsection (K) of this Section.
- D. For purposes of this Section, the compliance date, unless otherwise provided in a consent decree or a delayed compliance order, shall be January 14, 1986, except that the compliance date for the cumulative occurrence and emissions limits ~~contained~~ in R18-2-715(F)(1) and R18-2-715(G)(1) ~~and (2) shall be~~ is ~~(the effective date of this rule revision)~~ January 15, 2002.
- E. For purposes of subsection (C) ~~of this Section~~, a three-hour emissions average in excess of an emission level (E) ~~will be considered to violate~~ violates the associated cumulative occurrence limit (n) listed in R18-2-715(F) if ~~both~~:
 - 1. The number of all three-hour emissions averages calculated during the compliance period in excess of that emission level exceeds the cumulative occurrence limit associated with the emission level; and
 - 2. The average ~~was~~ is calculated during the last operating day of the compliance period being reported.
- F. A three-hour emissions average ~~can only violate~~ violates the cumulative occurrence limit (n) of an emission level (E) ~~in~~ on the day containing the last hour in the average.
- G. Multiple violations of ~~a~~ the same cumulative occurrence limit ~~in~~ on the same day and violations of different cumulative occurrence limits ~~in~~ on the same day ~~shall~~ constitute a single violation of ~~the requirements of~~ R18-2-715(F).
- H. The violation of any cumulative occurrence limit and an annual average emission limit ~~in~~ on the same day ~~shall constitute~~ constitutes only a single violation of the requirements of R18-2-715(F).
- I. Multiple violations of a cumulative occurrence limit by different three-hour emissions averages containing any common hour ~~shall constitute~~ constitutes a single violation of ~~the requirements of~~ R18-2-715(F).
- J. ~~For purposes of determining~~ To determine compliance with subsections (C) through (I) ~~of this Section~~, the compliance period ~~shall consist~~ consists of the 365 calendar days immediately preceding the end of each day of the month being reported unless that period includes less than 300 operating days; ~~in such in which~~ case the number of days preceding the last day of the compliance period shall be increased until the compliance period contains 300 operating days. ~~Any day in which sulfur containing feed is introduced into the smelting process constitutes~~ For purposes of this Section, an operating day is any day on which sulfur-containing feed is introduced into the smelting process.
- K. For purposes of determining To determine compliance with ~~the cumulative occurrence and emission limits contained in~~ R18-2-715(F), the owner or operator of any smelter subject to ~~such limits~~ R18-2-715(F) shall install, calibrate, maintain, and operate a measurement system for continuously monitoring sulfur dioxide concentrations and stack gas volumetric flow rates in each stack ~~which that~~ could emit five percent or more of the allowable annual average sulfur dioxide emissions from the smelter.

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1. ~~Such~~ The owner or operator shall continuously monitor measurement system shall also continuously monitor sulfur dioxide concentrations and stack gas volumetric flow rates in the outlet of each piece of sulfur dioxide control equipment.
2. The owner or operator shall continuously monitor captured ~~Captured~~ fugitive emissions ~~shall be continuously monitored~~ for sulfur dioxide concentrations and stack gas volumetric flow rates; and include ~~these emissions shall be included~~ as part of total plant emissions when determining compliance with the cumulative occurrence and emission limits ~~contained~~ in R18-2-715(F).
3. If the owner or operator ~~can demonstrate~~ demonstrates to the Director that measurement of stack gas volumetric flow in the outlet of any particular piece of sulfur dioxide control equipment would yield inaccurate results once operational or would be technologically infeasible, then the Director may allow measurement of the flow rate at an alternative sampling point.
4. For purposes of this subsection, continuous monitoring means the taking and recording of at least one measurement of sulfur dioxide concentration and stack gas flow rate reading from the effluent of each affected stack, outlet or other approved measurement location in each 15-minute period. Fifteen-minute periods start at the beginning of each clock hour, and run consecutively. An hour of smelter emissions ~~shall be considered to have been~~ is considered continuously monitored if the emissions from all monitored stacks, outlets, or other approved measurement locations are measured for at least 45 minutes of any hour ~~in accordance with~~ according to the requirements of this subsection.
5. The owner or operator shall demonstrate that the continuous monitoring system described in this subsection shall meet ~~meets~~ all of the following requirements:
 - a. The sulfur dioxide continuous emission monitoring system installed and operated ~~pursuant to~~ under this Section ~~shall be demonstrated to meet~~ meets the requirements of 40 CFR 60, Appendix B, Performance Specification 6.
 - b. The sulfur dioxide continuous emission monitoring system installed and operated ~~pursuant to~~ under this Section ~~shall be demonstrated to meet~~ meets the quality assurance ~~procedures~~ requirements of 40 CFR 60, Appendix F.
 - c. ~~The Director shall be notified~~ The owner or operator shall notify the Director in writing at least 30 days in advance of the start of ~~the field tests~~ quality assurance procedures performed on the continuous monitoring system.
 - d. ~~Location~~ The Director shall approve the location of all sampling points for monitoring sulfur dioxide concentrations and stack gas volumetric flow rates ~~shall be approved in writing by the Director prior to~~ before installation and operation of measurement instruments.
 - e. The measurement system installed and used ~~pursuant to~~ under this subsection ~~shall be~~ is subject to the manufacturer's recommended zero adjustment and calibration procedures at least once per 24-hour operating period unless the manufacturer specifies or recommends calibration at shorter intervals, in which case specifications or recommendations shall be followed. The owner or operator shall make available a ~~Records~~ record of these procedures ~~shall be made which that~~ clearly show ~~shows~~ instrument readings before and after zero adjustment and calibration.
- L. ~~Failure of the~~ The owner or operator of a smelter subject to this Section to ~~shall~~ shall measure at least 95 percent of the hours during which emissions occurred in any month, ~~shall constitute a violation of this Section.~~
- M. ~~Failure of the~~ The owner or operator of a smelter subject to this Section to ~~shall~~ shall measure any 12 consecutive hours of emissions ~~in accordance with~~ according to the requirements of subsection (K) or (S) ~~of this Section shall constitute a violation of this Section.~~
- N. The owner or operator of any smelter subject to this Section shall maintain on hand and ready for immediate installation sufficient spare parts or duplicate systems for the continuous monitoring equipment required by this Section to allow for the replacement within six hours of any monitoring equipment part ~~which that~~ fails or malfunctions during operation.
- O. ~~As a means of determining~~ To determine total overall emissions, the owner or operator of any smelter subject to this Section shall perform material balances for sulfur ~~in accordance with~~ according to the procedures prescribed by Appendix 8 of this Chapter.
- P. The owner or operator of any smelter subject to this Section shall maintain a record of all average hourly emissions measurements required ~~to be measured~~ by this Section. The record of ~~such the~~ emissions shall be retained for at least five years following the date of measurement. ~~All of the following~~ The owner or operator shall record the measurement results ~~shall be expressed~~ as pounds per hour of sulfur dioxide, ~~and shall be~~ The owner or operator shall ~~summarized~~ summarize ~~the following~~ monthly and ~~submitted~~ submit them to the Director within 20 days after the end of each month:
 1. For all periods described in subsection (C) and (R) ~~of this Section~~, the annual average emissions (~~expressed in pounds per hour~~) as calculated at the end of each day of the month;
 2. The total number of hourly periods during the month in which measurements were not taken and the reason for loss of measurement for each period;
 3. The number of three-hour emissions averages ~~which that~~ exceeded each of the applicable emissions levels listed in R18-2-715(F) and (G) for the compliance periods ending on each day of the month being reported;
 4. The date on which a cumulative occurrence limit listed in R18-2-715(F) or (G) was exceeded if ~~such the~~ exceedance occurred during the month being reported.

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- Q. ~~At~~ An owner or operator shall install instrumentation to monitor each point in the smelter facility where a means exists to bypass the sulfur removal equipment, ~~such bypass shall be instrumented and monitored to detect and record all periods that the bypass is in operation. Each~~ An owner or operator of a copper smelter shall report to the Director, not later than the fifteenth day of each month, the recorded information required ~~to be recorded~~ by this Section, ~~Such including report shall include~~ an explanation for the necessity of the use of the bypass.
- R. The owner or operator shall determine ~~Compliance~~ compliance with the cumulative occurrence and fugitive emission limits contained in R18-2-715(G)(1) and (2) ~~shall be determined~~ as follows:
1. The owner or operator shall calculate ~~Annual~~ annual average emissions ~~shall be calculated~~ at the end of each day by averaging the emissions for all hours measured during the compliance period, as defined in subsection (8), ending on that day. An annual emissions average in excess of the allowable annual average emission limit ~~will be considered~~ is a violation of R18-2-715(G)(1) if either:
 - a. The annual average is ~~larger~~ greater than the annual average computed for the preceding day; or
 - b. The annual averages computed for the five preceding days all exceed the allowable annual average emission limit.
 2. The owner or operator shall calculate a ~~Three~~ three-hour emissions ~~averages shall be calculated~~ average at the end of each clock hour by averaging the hourly emissions for the preceding three consecutive hours ~~whenever provided~~ each such hour was measured in accordance with ~~according to~~ the requirements contained in subsection (S).
 3. For purposes of ~~subsections (1) and subsection~~ subsection (2), a three-hour emissions average in excess of an emission level (E_r) ~~will be considered to violate~~ violates the associated cumulative occurrence limit (n) listed in R18-2-715(G)(2) if ~~both~~:
 - a. The number of all three-hour emissions averages calculated during the compliance period in excess of that emission level exceeds the cumulative occurrence limit associated with the emission level; and
 - b. The average ~~was~~ is calculated during the last operating day of the compliance period being reported.
 4. A three-hour emissions average ~~can only violate~~ violates the cumulative occurrence limit (n) of an emission level (E_r) ~~in on~~ the day containing the last hour in the average.
 5. Multiple violations of a ~~the same~~ cumulative occurrence limit ~~in on~~ the same day and violations of different cumulative occurrence limits ~~in on~~ the same day ~~shall constitute~~ constitute a single violation of ~~the requirements of~~ R18-2-715(G)(2).
 6. The violation of any cumulative occurrence limit and an annual average emission limit ~~in on~~ the same day ~~shall constitute~~ constitutes only a single violation of the requirements of R18-2-715(G).
 7. Multiple violations of a cumulative occurrence limit by different three-hour emissions averages containing any common hour ~~shall constitute~~ constitutes a single violation of ~~the requirements of~~ R18-2-715(G)(2).
 8. ~~For purposes of determining~~ To determine compliance with subsections (1) through (7), the compliance period ~~shall consist~~ consists of the 365 calendar days immediately preceding the end of each day of the month being reported unless that period includes less than 300 operating days, ~~in such in which~~ case the number of days preceding the last day of the compliance period shall be increased until the compliance period contains 300 operating days. ~~Any day in which sulfur-containing feed is introduced into the smelting process constitutes~~ For purposes of this section, an operating day is any day on which sulfur-containing feed is introduced into the smelting process.
- S. ~~For purposes of determining~~ To determine compliance with ~~the cumulative occurrence and fugitive emission limits contained in~~ R18-2-715(G)(1) and (2), the owner or operator of any smelter subject to ~~such limits~~ R18-2-715(G)(1) and (2) shall install, calibrate, maintain, and operate a measurement system for continuously monitoring sulfur dioxide concentrations of the converter roof fugitive emissions.
1. For purposes of this subsection, continuous monitoring means the taking and recording of at least one measurement of sulfur dioxide concentration from an approved measurement location in each 15-minute period. Fifteen-minute periods start at the beginning of each clock hour, and run consecutively. An hour of smelter emissions ~~shall be considered to have been~~ is considered continuously monitored if the emissions from all approved measurement locations are measured for at least 45 minutes of any hour ~~in accordance with~~ according to the requirements of this subsection.
 2. The owner or operator of a smelter subject to the requirements of this subsection shall conduct quality assurance procedures on the continuous monitoring system ~~in accordance with~~ according to the methods in 40 CFR 60, Appendix F, except that an annual relative accuracy test audit (RATA) is not required.

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

ADEQ received two comment letters on the proposed rule, one from a member of an environmental group and one from a copper company.

Comment 1: The environmental group member expressed an objection to reopening copper mines in the San Manuel region and subsequently lowering air quality standards to accommodate the mining activity.

Response 1: Mining operations are not addressed in this rule. The proposed rule makes changes applicable to a copper smelter located near San Manuel, Arizona, that has been temporarily shut down since June 24, 1999. The revised rule lowers the annual average sulfur dioxide (SO₂) emissions limit for this facility by more than 72,000 tons per year. If the smelting facility decides to resume operations, compliance with the new emissions limits will provide a

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greater level of protection of the National Ambient Air Quality Standards (NAAQS) for SO₂ than the limits previously contained in the rule.

Comment 2: The copper company asked that references to R18-2-715(G) in R18-2-715.01(R) and R18-2-715.01(S) be changed to R18-2-715(G)(1) to clarify that the compliance and quality assurance provisions of subsections (R) and (S) are only applicable to the San Manuel copper smelter. The copper company stated the change would avoid future misinterpretations of the rule.

Response 2: ADEQ has deleted the "Reserved" subsection at R18-2-715(G)(2). The San Manuel smelter is now the only listed source in R18-2-715(G).

Comment 3: The copper company asked that an annual relative accuracy test audit (RATA) be excluded from the 40 CFR 60, Appendix F, quality assurance requirements as referenced in R18-2-715.01(S)(2).

Response 3: At this time, the RATA procedures contained in 40 CFR 60, Appendix F are technologically infeasible for the emissions monitoring system used to determine compliance with the emissions limits contained in R18-2-715(G)(1) and, therefore, are not applicable to this source. To clarify the applicable requirements, ADEQ has incorporated the recommended exception into the rule.

Comment 4: The copper company asked that the R18-2-715.01(K)(5)(b) reference to 40 CFR 60, Appendix F, quality assurance and quality control (QA/QC) requirements, be revised to allow sources flexibility to develop an alternative but equivalent QA/QC program for continuous monitoring systems that accounts for site specific variations. The copper company stated the provisions contained in 40 CFR 60, Appendix F may impose unnecessary requirements.

Response 4: The provisions of 40 CFR 60, Appendix F, establish minimum QA requirements for continuous emissions monitoring systems and encourages source owners and operators "... to develop and implement a more extensive QA program..." The regulation also allows "... each source owner or operator to develop a QC system that is most effective and efficient for the circumstances." Because the federal regulation defines minimum requirements and already provides sources flexibility, ADEQ has not included the recommended change in the rule.

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 locations in the rules:

None

14. Was this rule previously adopted 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 7. EXISTING STATIONARY SOURCE PERFORMANCE STANDARDS

Section

R18-2-715. Standards of Performance for Existing Primary Copper Smelters; Site-specific Requirements

R18-2-715.01. Standards of Performance for Existing Primary Copper Smelters; Compliance and Monitoring

ARTICLE 7. EXISTING STATIONARY SOURCE PERFORMANCE STANDARDS

R18-2-715. Standards of Performance for Existing Primary Copper Smelters; Site-specific Requirements

- A. No change
- B. No change
- C. No change
- D. No change
- E. No change

F. Except as provided in a consent decree or a delayed compliance order, ~~no~~ the owner or operator of any primary copper smelter shall not discharge or cause the discharge of sulfur dioxide into the atmosphere from any stack required to be monitored by R18-2-715.01(K) in excess of the following:

- 1. For the copper smelter of Magma Copper Company, San Manuel Division located near San Manuel, Arizona at latitude 32°36'58"N and longitude 110°37'19"W:

- a. Annual average emissions, as calculated pursuant to under R18-2-715.01(C) ~~through (J)~~, shall not exceed ~~48,275~~ 1,742 pounds per hour.

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- b. The number of three-hour average emissions, as calculated pursuant to ~~under~~ under R18-2-715.01(C) ~~through (J)~~, shall not exceed n cumulative occurrences in excess of E, the emission level, shown in the following table in any compliance period as defined in R18-2-715.01(J):

<u>n,</u> <u>Cumulative</u> <u>Occurrences</u>	<u>E</u> <u>(lb/hr)</u>	<u>E_c</u> <u>(lb/hr)</u>
0	72,000	9803
1	68,000	8253
2	64,000	7619
4	61,000	6072
7	57,800	5660
12	54,800	4922
20	52,000	4515
32	49,500	4272
48	47,500	3945
68	45,500	3727
94	43,500	3568
130	41,200	3419
180	39,200	3253
245	37,200	3101
330	35,200	2958
435	33,770	2831
560	32,000	2712
710	30,200	2615
890	28,700	2525
1100	27,200	2440
1340	25,700	2366
1610	24,500	2290
1910	23,000	2216
2240	21,700	2142

2. No change
3. No change
4. No change
5. No change
6. No change

G. Except as provided in a consent decree or a delayed compliance order, the owner or operator of the copper smelter located near San Manuel, Arizona at latitude 32°36'58"N and longitude 110°37'19"W shall not discharge or cause the discharge of fugitive sulfur dioxide into the atmosphere in excess of the following:

1. Annual average emissions calculated under R18-2-715.01(R) shall not exceed 715 pounds per hour for converter roof fugitive emissions; and
2. The number of three-hour average emissions for converter roof fugitive emissions, calculated under R18-2-715.01(R) shall not exceed n cumulative occurrences in excess of E_f, the emission level, shown in the following table in any compliance period as defined in R18-2-715.01(J):

<u>n,</u> <u>Cumulative</u> <u>Occurrences</u>	<u>E_f</u> <u>(lb/hr)</u>
<u>0</u>	<u>4462</u>
<u>1</u>	<u>4299</u>
<u>2</u>	<u>4222</u>
<u>4</u>	<u>4017</u>
<u>7</u>	<u>3867</u>
<u>12</u>	<u>3460</u>

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<u>20</u>	<u>3179</u>
<u>32</u>	<u>3000</u>
<u>48</u>	<u>2827</u>
<u>68</u>	<u>2649</u>
<u>94</u>	<u>2523</u>
<u>130</u>	<u>2361</u>
<u>180</u>	<u>2218</u>
<u>245</u>	<u>2072</u>
<u>330</u>	<u>1923</u>
<u>435</u>	<u>1785</u>
<u>560</u>	<u>1644</u>
<u>710</u>	<u>1517</u>
<u>890</u>	<u>1402</u>
<u>1100</u>	<u>1300</u>
<u>1340</u>	<u>1208</u>
<u>1610</u>	<u>1121</u>
<u>1910</u>	<u>1039</u>
<u>2240</u>	<u>957</u>

R18-2-715.01. Standards of Performance for Existing Primary Copper Smelters; Compliance and Monitoring

- A. The cumulative occurrence and emission limits ~~specified~~ in R18-2-715(F) ~~shall~~ apply to the ~~sum~~ total of sulfur dioxide emissions from the smelter processing units and sulfur dioxide control and removal equipment, but not ~~including~~ uncaptured fugitive emissions and ~~those~~ emissions due solely to the use of fuel for space heating or steam generation.
- B. ~~The owner or operator shall include~~ ~~Periods~~ ~~periods~~ of malfunction, startup, shutdown or other upset conditions ~~shall not be excluded~~ when determining compliance with the cumulative occurrence or annual average emission limits ~~specified~~ in R18-2-715(F) ~~or (G)~~.
- C. ~~The owner or operator shall determine~~ Compliance compliance with the cumulative occurrence and emission limits contained in R18-2-715(F) ~~shall be determined~~ as follows:
 - 1. ~~The owner or operator shall calculate~~ Annual annual average emissions ~~shall be calculated~~ at the end of each day by averaging the emissions for all hours measured during the compliance period ~~defined in subsection (J)~~ ending on that day. An annual emissions average in excess of the allowable annual average emission limit ~~will be considered~~ is a violation ~~of R18-2-715(F)~~ if either:
 - a. The annual average is ~~larger~~ greater than the annual average computed for the preceding day; or
 - b. The annual averages computed for the five preceding days all exceed the allowable annual average emission limit; ~~and~~
 - 2. ~~The owner or operator shall calculate a~~ Three three-hour emissions ~~averages shall be calculated~~ average at the end of each clock hour by averaging the hourly emissions for the preceding three consecutive hours ~~whenever provided~~ each such hour was measured in accordance with according to the requirements ~~contained~~ in subsection (K).
- D. For purposes of this Section, the compliance date, unless otherwise provided in a consent decree or a delayed compliance order, shall be January 14, 1986, except that the compliance date for the cumulative occurrence and emissions limits in R18-2-715(F)(1) and R18-2-715(G)(1) and (2) is January 15, 2002.
- E. For purposes of subsection (C), a three-hour emissions average in excess of an emission level (E) will be considered to ~~violate~~ violates the associated cumulative occurrence limit (n) listed in R18-2-715(F) if ~~both~~:
 - 1. The number of all three-hour emissions averages ~~measured~~ calculated during the compliance period in excess of that emission level exceeds the cumulative occurrence limit associated with the emission level; and
 - 2. The average ~~was measured~~ is calculated during the last operating day of the compliance period being reported.
- F. A three-hour emissions average ~~can only violate~~ violates the cumulative occurrence limit (n) of an emission level (E) ~~in~~ on the day containing the last hour in the average.
- G. Multiple violations of a ~~the same~~ the same cumulative occurrence limit ~~in on~~ the same day and violations of different cumulative occurrence limits ~~in on~~ the same day ~~shall~~ constitute a single violation of ~~the requirements of~~ R18-2-715(F).
- H. The violation of any cumulative occurrence limit and an annual average emission limit ~~in on~~ the same day ~~shall constitute~~ constitutes only a single violation of the requirements of R18-2-715(F).
- I. Multiple violations of a cumulative occurrence limit by different three-hour emissions averages containing any common hour ~~shall constitute~~ constitutes a single violation of ~~the requirements of~~ R18-2-715(F).
- J. ~~For purposes of determining~~ To determine compliance with subsections (C) through (I), ~~of this Section,~~ the compliance period ~~shall consist~~ consists of the 365 calendar days immediately preceding the end of each day of the month being reported unless that period includes less than 300 operating days; ~~in such in which~~ case the number of days preceding the

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last day of the compliance period shall be increased until the compliance period contains 300 operating days. ~~Any day in which sulfur containing feed is introduced into the smelting process constitutes~~ For purposes of this Section, an operating day is any day on which sulfur-containing feed is introduced into the smelting process.

- K.** ~~For purposes of determining~~ To determine compliance with ~~the cumulative occurrence and emission limits contained in~~ R18-2-715(F), the owner or operator of any smelter subject to ~~such limits~~ R18-2-715(F) shall install, calibrate, maintain, and operate a measurement system for continuously monitoring sulfur dioxide concentrations and stack gas volumetric flow rates in each stack ~~which that~~ could emit five percent or more of the allowable annual average sulfur dioxide emissions from the smelter.
1. ~~Such~~ The owner or operator shall continuously monitor measurement system ~~shall also continuously monitor~~ sulfur dioxide concentrations and stack gas volumetric flow rates in the outlet of each piece of sulfur dioxide control equipment.
 2. The owner or operator shall continuously monitor captured ~~Captured~~ fugitive emissions ~~shall be continuously monitored~~ for sulfur dioxide concentrations and stack gas volumetric flow rates; and include these emissions ~~shall be included~~ as part of total plant emissions when determining compliance with the cumulative occurrence and emission limits ~~contained~~ in R18-2-715(F).
 3. If the owner or operator ~~can demonstrate~~ demonstrates to the Director that measurement of stack gas volumetric flow in the outlet of any particular piece of sulfur dioxide control equipment would yield inaccurate results once operational or would be technologically infeasible, then the Director may allow measurement of the flow rate at an alternative sampling point.
 4. For purposes of this subsection, continuous monitoring means the taking and recording of at least one measurement of sulfur dioxide concentration and stack gas flow rate reading from the effluent of each affected stack, outlet, or other approved measurement location in each 15-minute period. Fifteen-minute periods start at the beginning of each clock hour, and run consecutively. An hour of smelter emissions ~~shall be considered to have been~~ is considered continuously monitored if the emissions from all monitored stacks, outlets, or other approved measurement locations are measured for at least 45 minutes of any hour ~~in accordance with~~ according to the requirements of this subsection.
 5. The owner or operator shall demonstrate that the continuous monitoring system ~~described in this subsection shall meet~~ meets all of the following requirements:
 - a. ~~No later than 18 months prior to the compliance date and at such other times as the Director may specify, the stack gas volumetric flow rate measurement system~~ The sulfur dioxide continuous emission monitoring system installed and operated pursuant to under this Section ~~shall be demonstrated to meet~~ meets the performance specifications prescribed in 40 CFR 52, Appendix E requirements of 40 CFR 60, Appendix B, Performance Specification 6.
 - b. ~~No later than 18 months prior to the compliance date and at such other times as the Director may specify, the~~ The sulfur dioxide concentration measurement system continuous emission monitoring system installed and operated pursuant to under this Section ~~shall be demonstrated to meet~~ meets the measurement system performance specifications prescribed in 40 CFR 52, Appendix D, except that "maximum anticipated concentration" shall be substituted for "emission standard" in "Table I—Performance Specifications" quality assurance requirements of 40 CFR 60, Appendix F.
 - c. ~~The demonstrations of measurement systems performance required by subparagraphs (a) and (b) of this paragraph shall be conducted in accordance with the field test procedures prescribed by 40 CFR 52, Appendices D and E. The Director shall be notified~~ The owner or operator shall notify the Director in writing at least 30 days in advance of the start of ~~the field tests~~ quality assurance procedures performed on the continuous monitoring system.
 - d. ~~Location~~ The Director shall approve the location of all sampling points for monitoring sulfur dioxide concentrations and stack gas volumetric flow rates ~~shall be approved in writing by the Director prior to~~ before installation and operation of measurement instruments.
 - e. The measurement system installed and used pursuant to under this subsection ~~shall be~~ is subject to the manufacturer's recommended zero adjustment and calibration procedures at least once per 24-hour operating period unless the manufacturer specifies or recommends calibration at shorter intervals, in which case specifications or recommendations shall be followed. The owner or operator shall make available a ~~Records~~ record of these procedures ~~shall be made which that~~ clearly show shows instrument readings before and after zero adjustment and calibration.
- L.** ~~Failure of the~~ The owner or operator of a smelter subject to this Section ~~to~~ shall measure at least 95 percent of the hours during which emissions occurred in any month, ~~shall constitute a violation of this Section.~~
- M.** ~~Failure of the~~ The owner or operator of a smelter subject to this Section ~~to~~ shall measure any 12 consecutive hours of emissions ~~in accordance with~~ according to the requirements of subsection (K) or (S) ~~shall constitute a violation of this Section.~~

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- N. The owner or operator of any smelter subject to this Section shall maintain on hand and ready for immediate installation sufficient spare parts or duplicate systems for the continuous monitoring equipment required by this Section to allow for the replacement within six hours of any monitoring equipment part ~~which that~~ fails or malfunctions during operation.
- O. ~~As a means of determining~~ To determine total overall emissions, the owner or operator of any smelter subject to this Section shall perform material balances for sulfur ~~in accordance with~~ according to the procedures prescribed by Appendix 8 ~~of this Chapter.~~
- P. The owner or operator of any smelter subject to this Section shall maintain a record of all average hourly emissions measurements required ~~to be measured~~ by this Section. The record of ~~such the~~ the emissions shall be retained for at least ~~two~~ five years following the date of measurement. ~~All of the following~~ The owner or operator shall record the measurement results shall be expressed as pounds per hour of sulfur dioxide, ~~and shall be~~ The owner or operator shall ~~summarized~~ summarize ~~the following~~ the following monthly and ~~submitted~~ submit them to the Director within 20 days after the end of each month:
1. For all periods described in subsection (C) ~~and (R)~~, the annual average emissions (~~expressed in pounds per hour~~) as calculated at the end of each day of the month;
 2. The total number of hourly periods during the month in which measurements were not taken and the reason for loss of measurement for each period;
 3. The number of three-hour emissions averages ~~which that~~ exceeded each of the applicable emissions levels listed in R18-2-715(F) ~~and (G)~~ for the compliance periods ending on each day of the month being reported;
 4. The date on which a cumulative occurrence limit listed in R18-2-715(F) ~~or (G)~~ was exceeded if ~~such the~~ the exceedance occurred during the month being reported.
- ~~Q.~~ ~~The owner or operator of a smelter subject to this Section shall submit a proposed compliance schedule to the Director which demonstrates that the emission limits of R18-2-715(F) will be achieved at the smelter as expeditiously as practicable, but no later than the compliance date.~~
- ~~R.~~ ~~The schedule submitted pursuant to subsection (Q) shall include increments of progress and the date for achievement of such increments. The increments of progress shall include all of the following:~~
1. ~~No later than 30 months prior to the compliance date, submission to the Director of a final control plan for meeting the emission limits in R18-2-715(F);~~
 2. ~~No later than 28 months prior to the compliance date, letting of contracts or issuance of purchase orders for any process or control equipment necessary to accomplish the required emission control;~~
 3. ~~No later than 24 months prior to the compliance date, initiation of any necessary on-site construction or initiation of any necessary installation of emission control equipment or process modification;~~
 4. ~~No later than 24 months prior to the compliance date, submission of the fugitive emissions evaluation prescribed in R18-2-715.02(B) through (D), including a compliance plan for installation of any additional fugitive emission control equipment necessary to assure attainment and maintenance of the applicable ambient air quality standards in the vicinity of the smelter;~~
 5. ~~No later than 18 months prior to the compliance date, the initiation of the demonstrations of stack gas volumetric flow rate and sulfur dioxide concentration measurement systems required by subsections (K)(5)(a) and (b);~~
 6. ~~No later than 3 months prior to the compliance date, completion of any necessary on-site construction, or installation of emission control equipment or process modification; and~~
 7. ~~No later than the compliance date, achievement of compliance with the emission limits in R18-2-715(F).~~
- ~~S.~~ ~~The owner or operator shall certify to the Director, within 15 days after the deadline for completion of each increment, whether the required increment of progress has been met.~~
- ~~T.O.~~ ~~An owner or operator shall install instrumentation to monitor each point in the smelter facility where a means exists to bypass the sulfur removal equipment, such bypass shall be instrumented and monitored to detect and record all periods that the bypass is in operation. Each An owner or operator of a copper smelter shall report to the Director, not later than the 15th day of each month, the recorded information required to be recorded by this Section. Such including report shall include an explanation for the necessity of the use of the bypass.~~
- R.** The owner or operator shall determine compliance with the cumulative occurrence and fugitive emission limits contained in R18-2-715(G)(1) and (2) as follows:
1. The owner or operator shall calculate annual average emissions at the end of each day by averaging the emissions for all hours measured during the compliance period, as defined in subsection (8), ending on that day. An annual emissions average in excess of the allowable annual average emission limit is a violation of R18-2-715(G)(1) if either:
 - a. The annual average is greater than the annual average computed for the preceding day; or
 - b. The annual averages computed for the five preceding days all exceed the allowable annual average emission limit.
 2. The owner or operator shall calculate a three-hour emissions average at the end of each clock hour by averaging the hourly emissions for the preceding three consecutive hours provided each hour was measured according to the requirements contained in subsection (S).
 3. For purposes of subsection (2), a three-hour emissions average in excess of an emission level Ef violates the associated cumulative occurrence limit n listed in R18-2-715(G)(2) if:

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- a. The number of all three-hour emissions averages calculated during the compliance period in excess of that emission level exceeds the cumulative occurrence limit associated with the emission level; and
- b. The average is calculated during the last operating day of the compliance period being reported.
- 4. A three-hour emissions average only violates the cumulative occurrence limit n of an emission level Ef on the day containing the last hour in the average.
- 5. Multiple violations of the same cumulative occurrence limit on the same day and violations of different cumulative occurrence limits on the same day constitute a single violation of R18-2-715(G)(2).
- 6. The violation of any cumulative occurrence limit and an annual average emission limit on the same day constitutes only a single violation of the requirements of R18-2-715(G).
- 7. Multiple violations of a cumulative occurrence limit by different three-hour emissions averages containing any common hour constitutes a single violation of R18-2-715(G)(2).
- 8. To determine compliance with subsections (1) through (7), the compliance period consists of the 365 calendar days immediately preceding the end of each day of the month being reported unless that period includes less than 300 operating days, in which case the number of days preceding the last day of the compliance period shall be increased until the compliance period contains 300 operating days. For purposes of this section, an operating day is any day on which sulfur-containing feed is introduced into the smelting process.
- S. To determine compliance with R18-2-715(G)(1) and (2), the owner or operator of any smelter subject to R18-2-715(G)(1) and (2) shall install, calibrate, maintain, and operate a measurement system for continuously monitoring sulfur dioxide concentrations of the converter roof fugitive emissions.
 - 1. For purposes of this subsection, continuous monitoring means the taking and recording of at least one measurement of sulfur dioxide concentration from an approved measurement location in each 15-minute period. Fifteen-minute periods start at the beginning of each clock hour, and run consecutively. An hour of smelter emissions is considered continuously monitored if the emissions from all approved measurement locations are measured for at least 45 minutes of any hour according to the requirements of this subsection.
 - 2. The owner or operator of a smelter subject to the requirements of this subsection shall conduct quality assurance procedures on the continuous monitoring system according to the methods in 40 CFR 60, Appendix F, except that an annual relative accuracy test audit (RATA) is not required.