NOTICES OF PROPOSED RULEMAKING

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

NOTICE OF PROPOSED RULEMAKING

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 7. BOARD OF CHIROPRACTIC EXAMINERS

[R07-268]

PREAMBLE

1. Sections Affected **Rulemaking Action**

R4-7-101	Amend
R4-7-902	Amend

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

Authorizing statute: A.R.S. § 32-904(B)(2)

Implementing statute: A.R.S. §§ 32-900, 32-924(A)(5), 32-922.02, 32-924(A)(1), (4), (6), (12), (13), (14), (15), (21), (22), and (23), 32-925, 32-2811, 12-2291, 12-2292, 12-2293, 12-2294, and 12-2295

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

Notice of Rulemaking Docket Openings: 13 A.A.R. 122, January 12, 2007 and 12 A.A.R. 3902, October 20, 2006

Notice of Public Meeting On Open Rulemaking Docket: 13 A.A.R. 1056, March 23, 2007

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

Name:	Patrice A. Pritzl, Executive Director
Address:	5060 N. 19th Ave., Suite 416 Phoenix, AZ 85015-3210
Telephone:	(602) 864-5088
Fax:	(602) 864-5099
E-Mail:	merriejoh@earthlink.net

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

The rule defines terms found or referenced in statute and rule and further clarifies acts and omissions that are deemed to constitute unprofessional conduct under A.R.S. § 32-924. The Board initiated this rulemaking to provide further clarification under authorizing statute both in response to requests from the regulated community and in order to more effectively address violations of the Chiropractic Act that place the health, welfare and safety of the public at risk.

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

Not applicable

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

Not applicable

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

In drafting these amendments, the Board's intent is to address public health, safety and welfare while also providing the regulated community with definition and clarity regarding provisions of the Chiropractic Act. Both the public and the regulated community will benefit from these amendments in that clarity of the laws pertaining to acts or omis-

sions that pose a threat to public health, welfare, and safety will reduce the public's physical and financial exposure to unprofessional conduct while providing the regulated community with sufficient notice to avoid acts which may result in disciplinary action being taken against a license. The agency also hopes to benefit from the proposed rulemaking by realizing a reduction in the number of violations of the Chiropractic Act, although some cost will be incurred for the rulemaking process. Overall, the financial impact on a chiropractic business will be limited to minor costs associated with paperwork and education, in that the regulated chiropractor already has the obligation to comply with the laws that govern the practice of chiropractic and to not engage in unprofessional conduct. The proposed rules will incur a minor expense for the Office of the Secretary of State through the publication of the proposed rule, and will not have an impact on any other state agency or the general fund. The Board has determined that the benefits of this rulemaking outweigh any costs.

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

Name: Patrice A. Pritzl, Executive Director

Address: 5060 N. 19th Ave., Suite 416
Phoenix, AZ 85015-3210

Telephone: (602) 864-5088

Fax: (602) 864-5099

E-Mail: merriejoh@earthlink.net

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

Written comment will be accepted at the Board office, 5060 N. 19th Ave., Suite 416, Phoenix, AZ, 85015 on a business day between the hours of 8:00 a.m. and 5:00 p.m. until September 10, 2007. An oral proceeding is scheduled for September 20, 2007 at 3:00 p.m. at 5060 N. 19th Ave., Suite 405, Phoenix, AZ 85015.

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

Not applicable

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

Not applicable

13. The full text of the rules as follows:

TITLE 4. PROFESSIONS AND OCCUPATIONS

CHAPTER 7. BOARD OF CHIROPRACTIC EXAMINERS

ARTICLE 1. BOARD OF CHIROPRACTIC EXAMIENRS

Section
R4-7-101. Definitions

ARTICLE 9. UNPROFESSIONAL CONDUCT

Section
R4-7-902. Unprofessional or Dishonorable Conduct Activities

ARTICLE 1. BOARD OF CHIROPRACTIC EXAMINERS

R4-7-101. Definitions

In addition to the definitions in A.R.S. § 32-900, unless otherwise specified, the following terms have the following meanings:

1. "Adequate patient records" means legible chiropractic records containing, at the minimum, sufficient information to identify the patient and physician, support the diagnosis, identify the specific elements of the chiropractic service performed, indicate special circumstances or instruction provided to the patient, if any, identify a treatment plan and provide sufficient information for another practitioner to assume continuity of patient care.

~~1.~~2. "Business day" means Monday through Friday, 8:00 a.m. to 5:00 p.m. except for state ~~recognized~~ holidays.

~~2.~~3. "C.A." means a chiropractic assistant under A.R.S. § 32-900.

~~3.~~4. "Certification" means approval to practice chiropractic specialties under A.R.S. § 32-922.02.

~~4.~~5. "Chiropractor" means doctor of chiropractic, chiropractic physician, or the abbreviation "D.C." pursuant to A.R.S. §§ 32-925(A), 32-926(A) and (B).

6. "Controlled substance" means a drug or substance identified, defined, or listed in Title 36, Chapter 27, Article 2.
7. "Device" has the same meaning as prescribed in A.R.S. § 32-1901.
~~5.~~8. "Diagnosis" means the ~~physical, clinical, and laboratory examination of the a patient and the use of x-ray for diagnostic purposes, as taught in accredited chiropractic colleges.~~ determination of the nature of a condition or illness under A.R.S. § 32-925(A) and (B).
9. "Dispense" means to deliver to an ultimate user under A.R.S. § 32-925(A) and (B).
~~6.~~10. "Extern" means a student of a Board-approved chiropractic college who participates in the preceptorship training program.
~~7.~~11. "License" means a document issued by the Board to practice chiropractic.
12. "Non-prescription drug" or "over-the-counter drug" has the same meaning as prescribed in A.R.S. § 32-1901. Drug has the same meaning as prescribed in A.R.S. § 32-1901, but does not include those substances referenced in subsection (13).
13. "Nutrition" includes, but is not limited to, vitamins, minerals, water, enzymes, botanicals, homeopathic preparations, phytonutrients, glandular extracts, and natural hormones.
~~8.~~14. "Preceptor" means a supervising chiropractor approved by the Board to supervise a student in a Board-approved preceptorship training program.
~~9.~~15. "Preceptorship training program" means a Board-approved program by which a student may practice chiropractic under the supervision of a preceptor.
16. "Prescribe" means to order or recommend a treatment, or device.
17. "Prescription drug" has the same meaning as prescribed in A.R.S. § 32-1901.
~~10.~~18. "Supervision" means a licensed chiropractor is present in the office, sees a patient, ~~and~~ assigns the work to be done~~.~~ regarding the patient. ~~The chiropractor~~ and is available to check the work of the supervised individual as it progresses and approves the completed work.

ARTICLE 9. UNPROFESSIONAL OR DISHONOROABLE CONDCUT ACTIVITIES

R4-7-902. Unprofessional or Dishonorable Conduct ~~Activities~~

Unprofessional or dishonorable conduct, as used in A.R.S. § 32-924~~(B)~~ (A)(5), means:

1. ~~Referring a patient to a diagnostic or treatment facility or prescribing goods and services to be purchased from a facility in which the chiropractic physician has any pecuniary interest, without first disclosing in writing to the patient and any third- party payor, the chiropractic physician's interest.~~ Failing to disclose, in writing, to a patient or a third party payor that the licensee has a financial interest when referring a patient for a prescribed diagnostic test, treatment, good or service and that the diagnostic test, treatment, good or service is available on a competitive basis. This subsection does not apply to a referral by one licensee to another within a group of licensees who practice together. This subsection applies regardless of whether the referred service is provided at the licensees place of practice or at another location.
2. Knowingly making a false or misleading statement to ~~the Board, its investigators or representatives,~~ a patient~~,~~ or a third-party payor.
3. Knowingly making a false or misleading statement, providing false or misleading information, or omitting material information in any oral or written communication, including attachments, to the Board, Board staff or a Board representative or on any form required by the Board.
4. Knowingly filing with the Board an application, or other document that contains false or misleading information.
~~3.~~5. Failing to create ~~and maintain a~~ an adequate patient record that includes the patient's health history, clinical impression, examination findings, diagnostic results, x-ray films if taken, x-ray reports, treatment plan, ~~and~~ notes for each patient visit and a billing record. The notes for each patient visit shall include the patient's name, the date of service, the chiropractic physician's findings, all services rendered, and the name or initials of the chiropractic physician who provided services to the patient.
~~4.~~6. Failing to maintain a patient's record, including x-rays and the information required by subsection (5), for at least ~~five~~ six years after the last treatment date, or for a minor, six years after the minor's 18th birthday, or failing to provide written notice to the Board, about how to access the patient records of a chiropractic practice that is closed, for at least ~~five~~ six years after each patient's last treatment date or 18th birthday. ~~The patient records of minors shall be maintained for five years beyond the minor's 18th birthday.~~
~~5.~~7. Failing to:
   a. ~~release~~ Release a copy of any or all of a patient's record under subsection (5),to include the original or diagnostic quality radiographic copy x-rays, ~~or both~~ to another licensed physician, the patient, or the authorized agent of the patient, within 10 business days of ~~receiving a written~~ the receipt of a documented written request to do so.~~, or.~~ This Section does not require the release of a patient's billing record to another licensed physician.
   b. Release a copy of any or all of a patient's billing record to the patient or the authorized agent of the patient, within 10 business days of the receipt of a documented written request to do so.

c. Disclose to a patient or the authorized agent of the patient that a copy of the patient record must be provided following receipt of a documented written request for the record under subsection (7)(a).
d. ~~failing~~ Failing to return original x-rays to a licensed physician within 10 business days of a written request to do so.
e. Charging for or withholding copies of a patient records for payment from another licensed physician, the patient, or the authorized agent of the patient pursuant to A.R.S. § 12-2295(B).

~~6.~~8. Representing that the licensee is certified by this Board in a specialty area in which the licensee is not certified~~,~~ or has academic or professional credentials that the licensee does not have.

9. Failing to provide to a patient upon request documentation of being certified by the board in a specialty area or the licensee's academic or professional credentials.

~~7.~~10. Practicing ~~under,~~ or billing for services under any name other than the name by which the chiropractic physician is licensed by the board, including corporate, business, or other licensed health care providers' names, without first notifying the Board in writing.

~~8.~~11. Suggesting~~,~~ or having sexual contact, as defined in A.R.S. § 13-1401, with an individual with whom a consensual sexual relationship did not exist prior to a chiropractic/patient relationship being established in the course of patient treatment or within three months of the last chiropractic examination, treatment or consultation, ~~(other than with an individual with whom a current consensual personal relationship exists before a chiropractor/patient relationship was established).~~ and/or intentionally viewing a completely or partially disrobed patient in the course of an examination or treatment if the viewing is not related to the patient's complaint, diagnoses, or treatment under current practice standards.

~~9.~~12. ~~Charging a fee for services not rendered.~~ Improper billing. Improper billing means:
a. Charging a fee for services not rendered;
b. Charging a fee for services not documented in the patient record as being provided.
c. Charging a fee by fraud or misrepresentation, or willfully and intentionally filing a fraudulent claim with a third party payor;
d. Repeated irregularities in billing;
e. Misrepresenting the service provided for the purpose of obtaining payment; and
f. Charging a fee for a service provided by an unlicensed person who is not a chiropractic assistant under A.R.S. § 32-900 et al., or for services provided by an unsupervised chiropractic assistant.

~~10.~~13. Failing to timely comply with a board subpoena that allows ~~allow properly authorized~~ Board personnel to have~~, on demand by subpoena,~~ access to any document, report, or record maintained by the chiropractic physician relating to the chiropractic physician's practice or professional activities.

~~11.~~14. Failing to register and supervise ~~properly~~ a chiropractic assistant, ~~as per~~ under A.R.S. § 32-900 et al., that is supervised or employed by the chiropractic physician.

15. Allowing or directing a person who is not a chiropractic assistant and who is not licensed to practice a health care profession to provide patient services, other than clerical duties.

16. Intentionally misrepresenting the effectiveness of a treatment, diagnostic test, or device.

17. Administering, prescribing, or dispensing prescription only medicine or drugs or a prescription only device as defined in A.R.S. § 32-1901 and pursuant to A.R.S. § 32-925(B). This Section does not apply to those substances identified under A.A.C. R4-7-101(13).

18. Performing surgery or practicing obstetrics pursuant to A.R.S. § 32-925(B).

19. Performing or providing colonic irrigation.

20. Penetration of the rectum by a rectal probe or device for the administration of ultrasound, diathermy, or other modalities.

21. Use of ionizing radiation in violation of A.R.S. § 32-2811.

22. Promoting or using diagnostic testing or treatment for research or experimental purposes:
a. Without obtaining informed consent from the patient, in writing, before the diagnostic test or treatment. Informed consent includes disclosure to the patient of the research protocols, contracts the licensee may have with researchers, and information on the institutional review committee used to protect the patient.
b. Without conforming to generally accepted research or experimental criteria, including protocols, detailed records, periodic analysis of results and periodic review by a peer review committee.
c. For the financial benefit of the licensee.

23. Having professional connection with or lending one's name to or billing on behalf of an illegal practitioner of chiropractic or an illegal practitioner of any healing art.

24. Holding oneself out to be a current or past board member, Board staff member or a board chiropractic consultant if this is not true.

25. Claiming professional superiority in the practice of chiropractic.

26. Engaging in disruptive or abusive behavior in a clinical setting.

27. Engaging in the performance of substandard care by the licensee due to a deliberate or negligent act or failure to act

regardless of whether actual injury to the patient is established.

28. Intentionally disposing of confidential patient information or records without first redacting all personal identifying patient information or by any means other than shredding or incinerating the information or record.
29. Intentionally disclosing privileged communication or documentation, or confidential patient information except as otherwise required or allowed by law.
30. Being diagnosed by a physician recognized by the Board as excessively or illegally using alcohol, illegal drug, prescription drug or a controlled substance.
31. Committing a felony, whether or not involving moral turpitude, or a misdemeanor involving moral turpitude. Conviction by a court of competent jurisdiction or a plea of no contest is conclusive evidence of the Commission.
32. Having an action taken against a professional license in another jurisdiction, any limitation or restriction of the license, probation, suspension, revocation, surrender of the license as a disciplinary measure, or denial of a license application or license renewal related to unprofessional conduct.
33. Directly or indirectly dividing a professional fee for patient referrals among health care providers or health care institutions or between these providers and institutions or a contractual arrangement to that effect. This subsection does not prohibit the members of any regularly and properly organized business entity recognized by law and comprised of chiropractic physicians from dividing fees received for professional services among themselves as they determine necessary to defray their joint operating expense.

~~12.~~34. Failing to report in writing to the Board any information based upon personal knowledge that a chiropractic physician may be grossly incompetent, guilty of unprofessional or dishonorable conduct, or mentally or physically unable to provide chiropractic services safely. Any person who reports or provides information to the Board in good faith is not subjected to civil damages as a result of ~~that action~~ reporting or providing the information. If the informant requests that the informant's name not be disclosed, the Board shall not disclose the informant's name unless it is essential to the disciplinary proceedings conducted under ~~this Section~~ A.R.S. § 924.

~~13.~~35. Violating any federal or state ~~law~~ statute or rule or regulation applicable to the practice of chiropractic.

36. Any act or omission identified in A.R.S. § 32-924 (A).

NOTICE OF PROPOSED RULEMAKING

TITLE 9. HEALTH SERVICES

CHAPTER 6. DEPARTMENT OF HEALTH SERVICES
COMMUNICABLE DISEASES AND INFESTATIONS

[R07-275]

PREAMBLE

1. Sections Affected — **Rulemaking Action**

R9-6-601	Renumber
R9-6-601	New Section
R9-6-602	Renumber
R9-6-603	Renumber
R9-6-604	Renumber
R9-6-701	Amend
R9-6-702	Amend
R9-6-706	Amend
R9-6-707	Amend
Table 1	Amend
Table 2	Amend
R9-6-1201	Renumber
R9-6-1202	Renumber
R9-6-1203	Renumber
R9-6-1204	Renumber

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

Authorizing statute: A.R.S. §§ 36-136(A)(7) and 36-136(F)

Implementing statute: A.R.S. §§ 15-872, 15-873, 15-874, 36-135, 36-136(H)(1), 36-672, and 36-883(C)

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

Notice of Rulemaking Docket Opening: 13 A.A.R. 2685, August 3, 2007

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

Name:	Kathy Fredrickson, Office Chief Arizona Immunization Program Office
Address:	Department of Health Services 150 N. 18th Ave., Suite 120 Phoenix, AZ 85007
Telephone:	(602) 364-3630
Fax:	(602) 364-3285
E-mail:	fredrik@azdhs.gov
or	
Name:	Kathleen Phillips, Rules Administrator and Administrative Counsel
Address:	Department of Health Services Office of Administrative Rules and Counsel 1740 W. Adams St., Suite 200 Phoenix, AZ 85007
Telephone:	(602) 542-1264
Fax:	(602) 364-1150
E-mail:	phillik@azdhs.gov

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

The purpose of this rulemaking is to amend the rules for required immunizations for child care or school entry in Title 9, Chapter 6, Article 7 of the *Arizona Administrative Code*. The Arizona Department of Health Services (Department) is adding the meningococcal vaccine (MV) to the list of required immunizations for school entry. Meningococcal disease is a bacterial infection of the brain and spinal cord fluid, bloodstream, and other parts of the body. According to the Centers for Disease Control and Prevention (CDC)[1], approximately 10-15 percent of the people infected with meningococcal disease die as a result and an additional 10-19 percent suffer from permanent hearing loss, mental retardation, loss of limbs, nervous system problems, strokes and seizures. The CDC estimates that 2600 people in the United States are infected by meningococcal disease each year. In 2005, the United States Department of Health and Human Services Advisory Committee on Immunization Practices (ACIP) recommended that MV be added to the list of required immunizations for school entry.

The Department will amend the definitions in R9-6-701 to reflect the changes made to the Article. In R9-6-702, the Department is changing the age at which a child is to receive the Hepatitis A vaccine (Hep A) from two years to one year because the Hep A is now allowed for use at one year. In R9-6-707, the Department is amending the electronic reporting requirements for child immunization information reporting to reflect changes in technology. The Department is also amending the tetanus and diphtheria requirements to include tetanus, diphtheria, and acellular pertussis vaccine (Tdap) for a child that is 11 years old or older. Currently, the requirement allows for three doses of DTP, DTaP, or any combination of DTP and Td for child that is 11 years old or older. The amended rules are requiring that one dose of the three dose minimum of tetanus-diphtheria containing vaccines include a dose of Tdap for a child that is 11 years old or older. Tables 1 and 2 will be amended to reflect the changes that have been made to the Article. The Department is also renumbering the Tuberculosis Control rules in Article 6 to a new Article 12. Article 6 will now contain the post-exposure rabies prophylaxis reporting requirements that were in R9-6-707(I). The Department is adding electronic reporting of the post-exposure rabies prophylaxis to accommodate changes in technology. The amended rules will conform to current rulemaking format and style requirements, industry practice, and departmental policy.

1. National Immunization Program (NIP) vaccine information sheet "Meningococcal Vaccines: What You Need to Know" available at http://www.cdc.gov/vaccines/pubs/vis/downloads/vis-mening.pdf

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

The Department did not review, rely on, or not rely on any study for this rulemaking.

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

Not applicable

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

As used in this summary, "minimal" means less than $100,000; "moderate" means $100,000 to $999,999; "substantial" means $1,000,000 or more; and "significant" means meaningful or important, but not readily subject to quantification.

This summary describes only the most noteworthy economic impacts expected to result from this rulemaking.

This economic, small business, and consumer impact statement analyzes the costs and benefits of:

1. Adding MV to the list of required immunizations for school entry,
2. Changing the age at which a child is to receive the Hepatitis A vaccine (Hep A),
3. Amending the electronic reporting requirements for child immunization information reporting, and
4. Amending the tetanus and diphtheria requirements to include tetanus, diphtheria, and acellular pertussis vaccine (Tdap).

The Department estimates that the following parties will bear costs for this rulemaking: local health agencies, the Arizona Health Care Cost Containment System (AHCCCS), the Department of Education, the federal Vaccines for Children (VFC) program, the "317" federal funding program, other public vaccine providers, private health care providers, vaccine manufacturers, health insurance companies, schools, a child attending school, parents of a child attending school or child care, the public, and the Department. The Department estimates the following parties will benefit from this rulemaking: a child entering school or child care, parents of a child entering school or child care, vaccine manufacturers, the public, and the Department.

The Department, through the Arizona Immunization Program Office (AIPO), manages the federal Vaccines for Children Program (VFC) for the state of Arizona. Through the VFC, the Department provides free vaccines to enrolled public and private providers for eligible children. VFC-eligible children include children enrolled in the Arizona Health Care Cost Containment System (AHCCS), uninsured children, Native American or Alaskan native children, and some underinsured children. VFC children compose approximately 53% of the number of children in Arizona between birth and age 18.

In R9-6-702, the Department is adding meningococcal disease to the list of diseases that a child is required to be immunized against before attending school or entry into child care. The Department is implementing the MV requirement in a graduated process beginning in 2008. By 2014, all children in grades sixth to 12th will have received MV.

During the first year of implementation, the Department is requiring all children eleven years old to have received MV. The Department estimates that approximately 85,000 MV doses will be needed during the first year of implementation. The Department, using VFC and state funds, will purchase approximately 53 percent or 45,050 doses of MV at an estimated cost of $69.00 a dose for an estimated total of $3,108,450.00. The Department estimates that private providers not enrolled in VFC will purchase the remaining 47 percent or 39,950 doses of MV at an estimated cost of $90.00 per dose for an estimated total of $3,595,500.00. Therefore, the estimated total to purchase the MV during the first year of implementation is $6,703,950.00. The Department anticipates that by 2014, the number of MV doses needed may increase from 95,000 to 100,000 doses to accommodate the children that move to Arizona who have not received MV and the continued population growth of school age children in Arizona.

In R9-6-702, the Department is changing the age at which the child is to receive the Hep A but not the Hep A requirement. Currently, a child is to receive Hep A when the child is two through five years of age. The Department is changing the requirement and requiring a child to receive Hep A when the child is one to five years of age because Hep A is now licensed for use at one year. The Department does not anticipate that the change in the age at which a child is to receive the Hep A will have an economic impact.

In R9-6-707, the Department is amending the electronic reporting requirements for child immunization information reporting. Currently, if reporting electronically, the health care professional is to submit the required immunization information by modem, on a 3 1/2" diskette, or if using a software program that is not provided by Arizona Health Care Cost Containment System (ASIIS), provide all the required information in an American Standard Character Information Interchange delimited format. The Department is amending the electronic reporting requirements to require child immunization information to be reported in two ways:

1. By connecting to the ASIIS webpage through a secure Internet connection and entering the information, or
2. Ensuring that the information is submitted in a format that can be entered through a fully automated process without electronic manipulation of the data into ASIIS, and
    a. Provide a CD or DVD to the Department that contains the information, or
    b. Transfer the information to the Department through a secure FTP transmission.

The Department anticipates that the changes in the electronic reporting requirements will have a zero to minimal impact because the changes that are being required are consistent with current technologies for electronic reporting.

In the rules, the Department is also amending the tetanus and diphtheria requirements to include tetanus, diphtheria, and acellular pertussis vaccine (Tdap) for a child that is 11 years old or older. Currently, the requirement allows for three doses of DTP, DTaP, or any combination of DTP and Td for child that is 11 years old or older. The amended rules are requiring that one dose of the three dose minimum of tetanus-diphtheria containing vaccines include a dose of Tdap for a child that is 11 years old or older.

The cost to the Department for a dose of Tdap is an estimated $31.00 per dose. The cost to a private provider not enrolled in VFC is an estimated $37.00 per dose. Currently, the cost of a dose of DTP, DTaP, or any combination of DTP and Td for the Department is approximately $17.00 and the cost to a private provider not enrolled in VFC is approximately $19.00. The Department estimates that 85,000 doses of Tdap will be needed to administer Tdap to children entering school who are 11 years or older during implementation of the amended rules. The Department, using VFC and state funds, will purchase approximately 53 percent or 45,050 doses of Tdap at an estimated additional cost of $14.00 a dose for an estimated total of $630,700.00. The Department estimates that private providers not enrolled in VFC will purchase approximately 47 percent or 39,950 doses of Tdap at an estimated additional cost of $18.00 a dose for an estimated total of $719,000.00. The Department anticipates that the number of Tdap doses needed may increase to 95,000 to 100,000 doses to accommodate the children that move to Arizona who have not received Tdap and the continued population growth of school age children in Arizona.

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

Name: Kathy Fredrickson, Office Chief
Arizona Immunization Program Office

Address: Department of Health Services
150 N. 18th Ave., Suite 120
Phoenix, AZ 85007

Telephone: (602) 364-3630

Fax: (602) 364-3285

E-mail: fredrik@azdhs.gov

or

Name: Kathleen Phillips, Rules Administrator and Administrative Counsel

Address: Department of Health Services
Office of Administrative Rules and Counsel
1740 W. Adams St., Suite 200
Phoenix, AZ 85007

Telephone: (602) 542-1264

Fax: (602) 364-1150

E-mail: phillik@azdhs.gov

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

Date: September 11, 2007
Time: 10:30 a.m.
Location: Department of Health Services
150 N. 18th Ave., Room 115B
Phoenix, AZ 85007

A person may submit written comments on the proposed rules to either individual listed in items 4 or 9 until the close of record at 4:00 p.m., September 11, 2007. Persons with a disability may request reasonable accommodation by contacting Maria Herbert at herberm@azdhs.gov or (602) 364-0912. Requests should be made as early as possible to allow sufficient time to arrange for accommodation.

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

Not applicable

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

None

13. The full text of the rules follows:

TITLE 9. HEALTH SERVICES

CHAPTER 6. DEPARTMENT OF HEALTH SERVICES
COMMUNICABLE DISEASES AND INFESTATIONS

ARTICLE 6. ~~TUBERCULOSIS CONTROL~~ REPORTING POST-EXPOSURE RABIES PROPHYLAXSIS

Section
R9-6-601. ~~Definitions~~ Reporting Requirements
R9-6-602. ~~Local Health Agency Reporting Requirements~~ Renumbered
R9-6-603. ~~Tuberculosis Control in Correctional Facilities~~ Renumbered
R9-6-604. ~~Standards of Medical Care~~ Renumbered

ARTICLE 7. ~~VACCINE-PREVENTABLE DISEASES~~ REQUIRED IMMUNIZATIONS FOR CHILD CARE OR SCHOOL ENTRY

Section
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~~ARTICLE 6.~~ ARTICLE 12. TUBERCULOSIS CONTROL

Section
~~R9-6-601.~~ R9-6-1201. Definitions
~~R9-6-602.~~ R9-6-1202. Local Health Agency Reporting Requirements
~~R9-6-603.~~ R9-6-1203. Tuberculosis Control in Correctional Facilities
~~R9-6-604.~~ R9-6-1204. Standards of Medical Care

ARTICLE 6. ~~TUBERCULOSIS CONTROL~~ REPORTING POST-EXPOSURE RABIES PROPHYLAXIS

R9-6-601. ~~Definitions~~ Reporting Requirements

~~In addition to the definitions in A.R.S. § 36-711, the following definitions apply in this Article, unless otherwise specified:~~

~~1. "Inmate" means an individual who is incarcerated in a correctional facility.~~
~~2. "Latent tuberculosis infection" means the presence of Mycobacterium tuberculosis, as evidenced by a positive result from an approved test for tuberculosis, in an individual who:~~
~~a. Has no symptoms of active tuberculosis,~~
~~b. Has no clinical signs of tuberculosis other than the positive result from the approved test for tuberculosis, and~~
~~c. Is not infectious to others.~~
~~3. "Symptoms suggestive of tuberculosis" means any of the following that cannot be attributed to a disease or condition other than tuberculosis:~~
~~a. A productive cough that has lasted for at least three weeks;~~
~~b. Coughing up blood; or~~
~~c. A combination of at least three of the following:~~
~~i. Fever,~~
~~ii. Chills,~~
~~iii. Night sweats,~~
~~iv. Fatigue,~~
~~v. Chest pain, and~~
~~vi. Weight loss~~.

A physician or an authorized designee, shall submit a written or electronic report to the Department of all patients who receive post-exposure rabies prophylaxis. The report shall include:
1. Name, age, address, and telephone number of the person exposed;
2. Date of report;
3. Reporting institution or physician;
4. Date of exposure;
5. Body part exposed;
6. Type of exposure: Bite or saliva contact (non-bite);
7. Species of animal;
8. Animal disposition: quarantined, euthanized, died, unable to locate;
9. Animal rabies test results if any: positive or negative;
10. Treatment regimen; and
11. Date treatment was initiated.

R9-6-602. ~~Local Health Agency Reporting Requirements~~ Renumbered

~~**A.** Within 30 days after receiving information, a local health agency shall report to the Department regarding:~~
- ~~1. Each individual in its jurisdiction who has been diagnosed with active tuberculosis,~~
- ~~2. Each individual in its jurisdiction who is suspected of having active tuberculosis, and~~
- ~~3. Each individual in its jurisdiction who is believed to have been exposed to an individual with infectious active tuberculosis.~~

~~**B.** Each report made under subsection (A) shall consist of completed Centers for Disease Control and Prevention, U.S. Department of Health and Human Services, Form CDC 72.9A and B, "Report of Verified Case of Tuberculosis" (January 2003), which is incorporated by reference in R9-6-373, or a completed electronic equivalent to Form CDC 72.9A and B provided by the Department.~~

R9-6-603. ~~Tuberculosis Control in Correctional Facilities~~ Renumbered

~~**A.** An administrator of a correctional facility shall ensure that:~~
- ~~1. Each new inmate in the correctional facility undergoes a symptom screening for tuberculosis while processing into the correctional facility;~~
- ~~2. An inmate in whom symptoms suggestive of tuberculosis are detected during screening:~~
  - ~~a. Is immediately:~~
    - ~~i. Placed in airborne infection isolation, or~~
    - ~~ii. Required to wear a surgical mask and retained in an environment where exposure to the general inmate population is minimal and the inmate can be observed at all times to be wearing the mask;~~
  - ~~b. If not immediately placed in airborne infection isolation, is within 24 hours after screening:~~
    - ~~i. Given a medical evaluation for active tuberculosis, or~~
    - ~~ii. Transported to a health care institution to be placed in airborne infection isolation; and~~
  - ~~c. Is given a medical evaluation for active tuberculosis before being released from airborne infection isolation or permitted to stop wearing a surgical mask and released from the environment described in subsection (A)(2)(a)(ii).~~
- ~~3. Except as provided in subsection (A)(6), each new inmate who does not have a documented history of a positive result from an approved test for tuberculosis or who has not received an approved test for tuberculosis within the previous 12 months is given an approved test for tuberculosis within seven days after processing into the correctional facility;~~
- ~~4. Except as provided in subsection (A)(5), each new inmate who has a positive result from an approved test for tuberculosis or who has a documented history of a positive result from an approved test for tuberculosis is given a chest x-ray and a medical evaluation, within 14 days after processing into the correctional facility, to determine whether the inmate has active tuberculosis;~~
- ~~5. If an inmate has had a documented negative chest x-ray after a positive result from an approved test for tuberculosis, the inmate is not required to have another chest x-ray unless the inmate has signs or symptoms of active tuberculosis;~~
- ~~6. Each new inmate who is HIV positive, in addition to receiving an approved test for tuberculosis, is given a chest x-ray and a medical evaluation within seven days after processing into the correctional facility, to determine whether the inmate has active tuberculosis;~~
- ~~7. Each inmate who has a negative result from an approved test for tuberculosis when tested during processing has a repeat approved test for tuberculosis after 12 months of incarceration and every 12 months thereafter during the inmate's term of incarceration;~~
- ~~8. Each inmate with active tuberculosis is:~~
  - ~~a. Provided medical treatment that meets accepted standards of medical practice, and~~
  - ~~b. Placed in airborne infection isolation until no longer infectious; and~~
- ~~9. All applicable requirements in 9 A.A.C. 6, Articles 2 and 3 are complied with.~~

~~**B.** The requirements of subsection (A) apply to each correctional facility that houses inmates for 14 days or longer and to each inmate who will be incarcerated for 14 days or longer.~~

~~**C.** An administrator of a correctional facility, either personally or through a representative, shall:~~
- ~~1. Unless unable to provide prior notification because of security concerns, notify the local health agency at least one working day before releasing a tuberculosis case or suspect case;~~
- ~~2. If unable to provide prior notification because of security concerns, notify the local health agency within 24 hours after releasing a tuberculosis case or suspect case; and~~
- ~~3. Provide a tuberculosis case or suspect case or an inmate being treated for latent tuberculosis infection the name and address of the local health agency before the case, suspect case, or inmate is released.~~

R9-6-604. ~~Standards of Medical Care~~ Renumbered

~~A health care provider caring for an afflicted person shall comply with the recommendations for treatment of tuberculosis in American Thoracic Society/Centers for Disease Control and Prevention/Infectious Diseases Society of America: Treatment of~~

~~Tuberculosis (October 2002), published in 167 American Journal of Respiratory and Critical Care Medicine 603-662 (February 15, 2003), which is incorporated by reference, on file with the Department, and available from the American Thoracic Society, 61 Broadway, New York, NY 10006-2747 or at www.atsjournals.org, unless the health care provider believes, based on the health care provider's professional judgment, that deviation from the recommendations is medically necessary. If a health care provider caring for an afflicted person deviates from the recommendations for treatment of tuberculosis in American Thoracic Society/Centers for Disease Control and Prevention/Infectious Diseases Society of America: Treatment of Tuberculosis (October 2002), the health care provider shall, upon request, explain to the Department or a local health agency the rationale for the deviation. If the tuberculosis control officer determines that deviation from the recommendations for treatment of tuberculosis in American Thoracic Society/Centers for Disease Control and Prevention/Infectious Diseases Society of America: Treatment of Tuberculosis (October 2002), is inappropriate and that the public health and welfare require intervention, the tuberculosis control officer may take charge of the afflicted person's treatment as authorized under A.R.S. § 36-723(C).~~

ARTICLE 7. ~~VACCINE-PREVENTABLE DISEASES~~ REQUIRED IMMUNIZATIONS FOR CHILD CARE OR SCHOOL ENTRY

R9-6-701. Definitions

In this Article, unless otherwise specified:

1. ~~"AHCCCS" means the Arizona Health Care Cost Containment System.~~ "Administration of vaccine" means the inoculation of a child with an immunizing agent by an individual authorized by federal or state law.
2. ~~"Administration of vaccine" means the inoculation of a child with an immunizing agent by an individual authorized by federal or state law.~~ "AHCCCS" means the Arizona Health Care Cost Containment System.
3. No change
4. No change
5. No change
6. No change
7. No change
8. No change
   a. No change
   b. No change
9. No change
   a. No change
   b. No change
10. No change
11. No change
12. No change
13. No change
    a. No change
    b. No change
14. No change
15. No change
16. No change
17. No change
18. "Head Start program" means a federally funded program administered under 42 U.S.C. 9831 ~~et. Seq~~ to 42 U.S.C. 9852.
19. No change
20. No change
21. No change
22. No change
23. No change
24. No change
25. "Imported" means entered through a fully automated process without electronic manipulation of the data.

~~25.~~26. No change
~~26.~~27. No change
~~27.~~28. No change
~~28.~~29. No change
~~29.~~30. No change
~~30.~~31. No change
~~31.~~32. No change

~~32.~~33. No change
~~33.~~34. No change
35. "MV" means meningococcal vaccine.
~~34.~~36. No change
~~35.~~37. No change
~~36.~~38. No change
~~37.~~39. No change
~~38.~~40. No change
~~39.~~41. No change
~~40.~~42. No change
~~41.~~43. No change
~~42.~~44. No change
~~43.~~45. No change
~~44.~~46. No change
~~45.~~47. No change
~~46.~~48. No change
49. "Td" means tetanus and diphtheria vaccine.
~~47.~~50. ~~"Temporary" means lasting for a limited time.~~ "Tdap" means tetanus, diphtheria, and acellular pertussis vaccine.
~~48~~51. ~~"Td" means tetanus and diphtheria vaccine.~~ "Temporary" means lasting for a limited time.
~~49.~~52. No change
~~50.~~53. No change
~~51.~~54. No change
~~52.~~55. No change
~~53.~~56. No change
~~54.~~57. No change
~~55.~~58. No change
~~56.~~59. No change

R9-6-702. Required Immunizations for Child Care or School Entry

A. No change
1. Ensure that a child attending a school or child care has been immunized ~~against~~ for each of the following diseases according to Table 1 or Table 2:
   a. No change
   b. No change
   c. Hepatitis A, for a child ~~two~~ one through five years of age in child care in Maricopa County;
   d. No change
   e. No change
   f. No change
   g. No change
   h. No change
   i. No change
   j. *Haemophilus influenzae* type b; ~~and~~
   k. No change
   l. Meningococcal; and
2. No change
   a. No change
   b. No change

~~**B.** Unless exempt according to R9-6-706, a child who has received a first dose of MMR but has not received a second dose of MMR shall:~~
~~1. Receive the second dose according to Table 2 and the following:~~
~~a. By September 1, 2002 for a child attending kindergarten through fourth grade or seventh through ninth grade;~~
~~b. By September 1, 2003 for a child attending kindergarten through fifth grade or seventh through 10th grade;~~
~~c. By September 1, 2004 for a child attending kindergarten through 11th grade; and~~
~~d. By September 1, 2005 for a child attending kindergarten through 12th grade; and~~
~~2. Be excluded from school entry by a school administrator until the requirements in Table 2 are met.~~

~~**C.** Unless exempt according to R9-6-706, a child who has not completed the three-dose Hep B series specified in Table 1 or 2 shall:~~
~~1. Receive the remaining doses according to Table 2 and the schedule in subsection (B)(1)(a) through (B)(1)(d), and~~
~~2. Be excluded from school entry by a school administrator until the requirements in Table 2 are met.~~

~~**D.**~~**B.** Unless exempt according to R9-6-706, a child who has not received the VAR ~~specified in~~ according to Table 1 or Table 2 shall:
1. Receive the VAR ~~dose~~ according to ~~Table 2 and~~ the following:
   a. By September 1, 2005 for a child who is entering ~~attending~~ kindergarten, first grade, and seventh grade; and
   b. By September 1, 2006 for a child who is entering ~~attending~~ kindergarten through second grade, seventh grade, and eighth grade; and
   c. By September 1, 2007 for a child who is entering ~~attending~~ kindergarten through third grade, and seventh grade through ninth grade; and
   d. By September 1, 2008 for a child who is entering ~~attending~~ kindergarten through fourth grade, and seventh grade through tenth grade; and
   e. By September 1, 2009 for a child who is entering ~~attending~~ kindergarten through fifth grade, and seventh grade through 11th grade; and
   f. By September 1, 2010 for a child who is entering ~~attending~~ kindergarten through 12th grade; and
2. Be excluded from school entry by a school administrator until the child meets the requirements in Table 2 ~~are met~~.

C. Unless exempt according to R9-6-706, a child, 11 years of age or older, who has not received the MV specified in Table 1 or Table 2 shall:
1. Receive the MV according to the following:
   a. By September 1, 2008 for a child entering sixth grade,
   b. By September 1, 2009 for a child entering sixth and seventh grade,
   c. By September 1, 2010 for a child entering sixth through eighth grade,
   d. By September 1, 2011 for a child entering sixth through ninth grade,
   e. By September 1, 2012 for a child entering sixth through tenth grade,
   f. By September 1, 2013 for a child entering sixth through 11th grade,
   g. By September 1, 2014 for a child entering sixth through 12th grade, and
2. Be excluded from school entry by a school administrator until the child meets the requirements in this Section.

D. Unless exempt according to R9-6-706, a child, 11 years of age or older, who has not received the Tdap specified in Table 1 or Table 2 shall:
1. Receive the Tdap according to the following:
   a. By September 1, 2008 for a child entering sixth grade,
   b. By September 1, 2009 for a child entering sixth and seventh grade,
   c. By September 1, 2010 for a child entering sixth through eighth grade,
   d. By September 1, 2011 for a child entering sixth through ninth grade,
   e. By September 1, 2012 for a child entering sixth through tenth grade,
   f. By September 1, 2013 for a child entering sixth through 11th grade,
   g. By September 1, 2014 for a child entering sixth through 12th grade, and
2. Be excluded from school entry by a school administrator until the child meets the requirements in this Section.

E. No change
1. No change
2. No change
3. No change
   a. No change
   b. No change

F. No change
1. No change
   a. No change
   b. No change
2. No change

R9-6-706. Exemptions from Immunizations

A. No change

B. A child who ~~has reached a seventh birthday~~ is seven through 10 years of age is exempt from the pertussis immunization requirement.

C. No change
1. No change
2. No change

D. No change

E. No change
1. No change
2. No change

3. No change
4. No change
5. No change
6. No change
7. No change
8. No change

F. No change
1. No change
2. No change
3. No change
4. No change
5. No change
6. No change
7. No change
8. No change

G. No change
1. No change
2. No change
3. No change

R9-6-707. ~~Required Reports~~ Reporting Requirements

A. No change
1. No change
2. No change
3. No change
4. No change
5. No change
6. No change
7. No change
8. No change
   a. No change
   b. No change
   c. No change
   d. No change
9. No change

B. No change
1. No change
2. No change
3. No change

C. No change
1. No change
   a. No change
   b. No change
   c. No change
   d. No change
   e. No change
   f. No change
      i. No change
      ii. No change
      iii. No change
      iv. No change
      v. No change
      vi. No change
   g. No change
   h. No change
2. No change
   a. No change
   b. No change

D. No change

1. No change
2. No change
3. No change
4. No change
5. No change
6. No change
7. No change
8. No change
9. No change
    a. No change
    b. No change
    c. No change
    d. No change

E. No change
1. No change
2. No change
3. No change
    a. No change
    b. No change
    c. No change
    d. No change
    e. No change

F. No change

G. No change

H. As required by A.R.S. § 36-135, a health care professional ~~licensed according to A.R.S. Title 32~~ shall ~~report each vaccine administered to each child as follows~~ submit for each vaccine administered to a child the information required in A.R.S. § 36-135(B), the IRMS number, and the VPC PIN number, if applicable, to the Department as follows:

~~1. If reporting by mail or fax, the health care professional shall use a form supplied by the Department, and provide the following:~~
    ~~a. All information required in A.R.S. § 36-135(B);~~
    ~~b. IRMS number; and~~
    ~~c. VFC PIN number, if applicable;~~

1. If reporting by mail or fax, the health care professional shall use a form provided by the Department.

~~2. If reporting by telephone, the health care professional shall report all information in subsection (H)(1) between 8:00 a.m. and 5:00 p.m., Monday through Friday, except state holidays, by calling a telephone number provided by the Department for this purpose; and~~

2. If reporting by telephone, the health care professional shall call a telephone number provided by the Department for this purpose between 8:00 a.m. and 5:00 p.m., Monday through Friday, except state holidays.
3. If reporting electronically, the health care professional shall:
    a. ~~Confirm with ASIIS that the computer system meets the technical specifications required by ASIIS;~~ Connect to the ASIIS webpage through a secure Internet connection and enter the information; or
    b. ~~Connect to ASIIS by modem or submit to the Department a 3 1/2" diskette with the required information in subsection (H)(1)~~ Ensure that the information is submitted in a format that can be imported into ASIIS and:
    ~~c. If using a software program that is not provided by ASIIS, provide all the required information in an American Standard Character Information Interchange delimited format.~~
        i. Provide a compact disk or digital video disk that contains the information to the Department; or
        ii. Transfer the information to the Department through a secure file transfer protocol.

~~**I.** A physician or an authorized designee, shall submit a written report to the Department of all patients who receive post-exposure rabies prophylaxis. The report shall include:~~
~~1. Name, age, address, and telephone number of the person exposed;~~
~~2. Date of report;~~
~~3. Reporting institution or physician;~~
~~4. Date of exposure;~~
~~5. Body part exposed;~~
~~6. Type of exposure: Bite or saliva contact (non-bite);~~
~~7. Species of animal;~~
~~8. Animal disposition: quarantined, euthanized, died, unable to locate;~~
~~9. Animal rabies test results if any: positive or negative;~~
~~10. Treatment regimen; and~~

~~11. Date treatment was initiated.~~

Table 1. Immunization Requirements for Child Care or School Entry

Age at Entry <u>into a Child Care or School</u>	**Number of Doses of Vaccine Required**	**Special Notes and Exceptions**
<2 months	1 Hep B	(See Note 1)
2 through 3 months	1 DTP or DTaP 1 Polio 1 Hib 1 Hep B	 (See Note 1)
4 through 5 months	2 DTP or DTaP 2 Polio 2 Hib 2 Hep B	 (See Note 1)
6 through 11 months	3 DTP or DTaP 2 Polio 3 Hib 2 Hep B	 (Hib exception – See Note 2 for a child 7 months through 59 months of age.) (See Note 1)
12 through 14 months	3 DTP or DTaP 3 Polio 1-4 Hib 1 MMR 3 Hep B 1 Varicella	 (See Note 2) (See Note 3) (See Note 1) (See Note ~~7~~ 8)
15 through 59 months	4 DTP or DTaP 3 Polio 1-4 Hib 1-2 MMR 3 Hep B 1 Varicella	 (See Note 2) (See Note 3) (See Note 1) (See Note ~~7~~ 8)
~~2~~ 1 through 5 years (Only required for Maricopa County child care)	2 Hep A	(See Note ~~4~~)
Kindergarten or 1st grade entry 4 through 6 years	5 DTP or DTaP 4 Polio 2 MMR 3 Hep B 1 Varicella	Exception – A 5th dose is not required if the 4th dose of diphtheria-tetanus containing vaccine was received after the 4th birthday. Exception – A 4th dose is not required if the 3rd dose of polio was received after the 4th birthday. (See Note 3) A child entering school shall receive a 2nd dose, 1 month or more after the date of the 1st dose. (See Note ~~7~~ 8)

7 years ~~or older~~ through 10 years	~~5 DTP, DTaP, or any combination of DTP and Td~~ 4 Tetanus-diphtheria containing vaccines (no pertussis)	Exception – ~~A 5th dose is not required if the 4th dose of diphtheria-tetanus containing vaccine was received after the 4th birthday~~ A 4th dose is not required if the 1st dose of diphtheria-tetanus containing vaccine was received after 12 months of age. ~~Exception - If started on or after the 7th birthday, a minimum of 3 doses of a tetanus diphtheria containing vaccine is required.~~
	4 Polio	Exception – A 4th dose is not required if the 3rd dose of polio was received after the 4th birthday. (See Note ~~6~~ 7)
	~~1~~ 2 MMR	(See Note 3)
	3 Hep B	A child entering school shall receive the Hep B series according to Note 1.
	1Varicella	(See Note ~~7~~ 8)
11 years	1 MV	(See Note 5)
11 years or older	~~3 DTP, DTaP, or any combination of DTP and Td~~ 4 Tetanus-diphtheria containing vaccines including 1 Tdap	~~Exception - A 5th dose is not required if the 4th dose of diphtheria-tetanus containing vaccine was received after the 4th birthday~~ (See Note 6) Exception – A 4th dose is not required if the 1st dose of diphtheria-tetanus containing vaccine was received after 12 months of age. ~~Exception - If started on or after the 7th birthday, a minimum of 3 doses of a tetanus-diphtheria containing vaccine is required~~.
	1 Tdap, in addition to the 4 Tetanus-diphtheria containing vaccines, if 5 years have passed since the date of a child's last dose of tetanus-diphtheria containing vaccine and the child has not received Tdap.	
	1 Tetanus-diphtheria containing vaccine, if 10 years or more have passed since the date of the child's last dose of Tdap or tetanus-diphtheria containing vaccine.	~~A child shall receive a Td dose if 10 years or more have passed since the date of the last dose of tetanus-diphtheria containing vaccine.~~
	4 Polio	Exception – A 4th dose is not required if the 3rd dose of polio was received after the 4th birthday. (See Note ~~6~~ 7)
	~~1~~ 2 MMR	(See Note 3)
	3 Hep B	A child entering school shall receive the Hep B series according to Note 1.
	1-2 Varicella	(See Note ~~7~~ 8)

1. A child shall receive the 1st dose of Hep B ~~according to R9-6-702(C), or~~ no later than 15 days following child care entry. A child shall receive the 2nd dose of Hep B 4 weeks or more after the date of the 1st dose. A child who is 6 months of age or older shall receive the 3rd dose 2-5 months after the date of the 2nd dose and 4 months or more after

the date of the 1st dose. For a child 11-15 years of age who receives the optional Merck Recombivax HB Adult Formulation vaccine, only 2 doses are required 4 or more months apart.

2. The recommended schedule for 4 dose Hib vaccine is 2, 4, and 6 months of age with a booster dose at 12-15 months of age. The optimal schedule for 3 dose Hib vaccine is 2 and 4 months of age with a booster dose at 12 -15 months of age. There shall be a minimum interval of 4 weeks between each of the first 3 doses. A child shall receive a booster dose no earlier than 12 months of age and no earlier than 8 weeks after the previous dose. A child who starts the Hib series after 7 months of age may be required to complete a full 3 or 4 dose series. A child who starts Hib at 15 months of age or older shall receive 1 dose at 15-59 months of age.
3. A child who is 12 months of age or older, shall receive measles, mumps, and rubella vaccines as individual antigens or as a combined MMR vaccine. A child shall receive the 1st dose of MMR before school entry, or no later than 15 days following child care entry. A child who is 4 years of age or older and who is entering school shall receive a 2nd dose of MMR according to R9-6-702(B), and 1 month or more after the date of the 1st dose.
4. A child who is ~~2~~ 1 through 5 years of age shall receive the 1st dose of hepatitis A vaccine no later than 15 days following child care entry in Maricopa County. A child shall receive a 2nd dose 6 months following the date of the 1st dose.
5. A child shall receive MV according to R9-6-702(C) no later than 15 days following school entry.
6. A child shall receive a dose of Tdap before the 2 doses of tetanus-diphtheria containing vaccine.

~~5.~~ 7. Polio vaccine is not required for individuals 18 years of age or older.

~~6.~~ 8. A child shall receive ~~the~~ VAR according to ~~the schedule in~~ R9-6-702~~(D)~~ (B) no later than 15 days following child care or school entry. A child who receives VAR at 12 months through 12 years of age shall receive one dose. A child who receives the 1st dose of VAR at 13 years of age or older shall receive the 2nd dose if 4 weeks or more have passed since the date of the 1st dose.

Table 2. Catch-up Immunization Schedule for Child Care or School Entry

Vaccine	Dose	Time Intervals, Special Notes, and Exceptions
1. Diphtheria, Tetanus, and Pertussis a. For a Child Younger Than 7 Years of Age: DTP or any combination of DTP or DTaP	1st	A child shall receive the 1st dose before school entry, or no later than 15 days following child care entry.
	2nd	If 4 weeks or more have passed since the date of the 1st dose, a child shall receive the 2nd dose before school entry, or no later than 15 days following child care entry.
	3rd	If 4 weeks or more have passed since the date of the 2nd dose, a child shall receive the 3rd dose before continued attendance at school, or no later than 15 days following continued attendance at child care.
	4th	If 6 months or more have passed since the date of the 3rd dose, a child shall receive the 4th dose before continued attendance at school, or no later than 15 days following continued attendance at child care.
	5th or more	A child shall receive a 5th dose before continued attendance at school, or no later than 15 days following child care entry. Exception – A 5th dose is not required if the child received the 4th dose after the child's 4th birthday.
b. For a Child 7 ~~Years of Age and Older~~ through 10 Years of Age: Tetanus-diphtheria containing vaccines (no pertussis)	1st	A child shall receive a 1st dose before school entry.

	2nd	If 4 weeks or more have passed since the date of the 1st dose, a child shall receive the 2nd dose before school entry.
	3rd	If 6 months or more have passed since the date of the 2nd dose, a child shall receive the 3rd dose before school entry.
	4th	A 4th dose is not required if the 1st dose of diphtheria-tetanus containing vaccine was received after 12 months of age.
c. For a Child 11 Years of Age and Older: Tetanus-diphtheria containing vaccines including 1 Tdap	1st	(See Note 2 below) A child shall receive a 1st dose before school entry.
	2nd	If 4 weeks or more have passed since the date of the 1st dose, a child shall receive the 2nd dose before school entry.
	3rd	If 6 months or more have passed since the date of the 2nd dose, a child shall receive the 3rd dose before school entry.
	4th	Exception – A 4th dose is not required if the 1st dose of diphtheria-tetanus containing vaccine was received after 12 months of age.
2. Polio	1st	(See Note ~~1~~ 3 below.) A child shall receive the 1st dose before school entry, or no later than 15 days following child care entry.
	2nd	If 4 weeks or more have passed since the date of the 1st dose, a child shall receive the 2nd dose before school entry, or no later than 15 days following child care entry.
	3rd	If 4 weeks or more have passed since the date of the 2nd dose, the child shall receive the 3rd dose before school entry, or no later than 15 days following child care entry.
	4th	If 8 weeks or more have passed since the date of the 3rd dose, the child shall receive the 4th dose before school entry. Exception – A 4th dose is not required if the 3rd dose was received after the 4th birthday.
3. MMR Measles, Mumps, Rubella	1st	A child who is 12 months of age or older shall receive the 1st dose before school entry, or no later than 15 days following child care entry.
	2nd	~~(See Note 3 below.)~~ If 1 month or more has passed since the date of the 1st dose, a child who is 4 years of age or older entering kindergarten through 12th grade shall receive the 2nd dose before school entry.
4. Hib *Haemophilus influenzae* type b (Not required for individuals aged 5 years of age and older.)	1st through 4th	A child who is younger than 5 years of age shall receive a dose no later than 15 days following child care entry. (See Note ~~2~~ 4 below.)
5. Hep B Hepatitis B	1st	~~(See Note 4 below.)~~ A child shall receive the 1st dose before school entry, or no later than 15 days following child care entry.

	2nd	If 4 weeks or more have passed since the date of the 1st dose, a child shall receive the 2nd dose before school entry, or no later than 15 days following child care entry.
	3rd	If 2 months or more have passed since the date of the 2nd dose, and 4 months or more have passed since the date of the 1st dose and the child is at least 6 months of age, a child shall receive the 3rd dose before school entry, or no later than 15 days following child care entry. Exception – A child who is 11 through 15 years of age who is receiving the Merck Recombivax HB Adult Formulation vaccine is not required to receive a 3rd dose.
6. Hep A Hepatitis A Only required for Maricopa County child care	1st	A child who is ~~24 through 71 months~~ 1 through 5 years of age shall receive the 1st dose no later than 15 days following child care entry.
	2nd	If 6 months or more have passed since the date of the 1st dose, a child shall receive the 2nd dose no later than 15 days following child care entry.
7. Varicella	1st	(See Note 5 below.) A child who is 12 months of age through 12 years shall receive one dose before school entry, or no later than 15 days following child care entry.
	2nd	If 1 month or more has passed since the date of the first dose, a child who is 13 years of age or older shall receive a 2nd dose.
8. Meningococcal	1st	(See Note 1 below) A child who is 11 years old shall receive one dose of MV before school entry.

1. A child shall receive MV according to R9-6-702(C) no later than 15 days following school entry.
2. A child shall receive a dose of Tdap before the 2 doses of tetanus-diphtheria containing vaccine.

~~1.~~3. Polio vaccine is not required for individuals 18 years of age or older.

~~2.~~4. A child who begins the Hib series at 7 months of age or older shall receive Hib according to the following schedule:

Current Age (months)	Prior Immunization History	Recommended Regimen
7-11	1 dose	1 dose at 7-11 months of age and a booster at least 2 months later at 12-15 months of age
7-11	2 doses	1 dose at 7-11 months of age and a booster at least 2 months later at 12-15 months of age
12-14	1 dose before 12 months	2 doses administered at least 2 months apart
12-14	2 doses before 12 months	1 dose
15-59	Any incomplete schedule	1 dose

~~3. According to the schedule in R9-6-702(B), a child shall receive the 2nd MMR before entering school.~~

~~4. According to the schedule in R9-6-702(B), a child shall receive the hepatitis B series before entering school or no later than 15 days following child care entry.~~

5. A child shall receive ~~the~~ VAR according to ~~the schedule in~~ R9-6-702~~(D)~~ (B) no later than 15 days following child care entry.

~~ARTICLE 6.~~ ARTICLE 12. TUBERCULOSIS CONTROL

~~R9-6-601.~~ R9-6-1201. Definitions

No change

1. No change
2. No change

a. No change
b. No change
c. No change
3. No change
a. No change
b. No change
c. No change
i. No change
ii. No change
iii. No change
iv. No change
v. No change
vi. No change

~~R9-6-602.~~ R9-6-1202. Local Health Agency Reporting Requirements

A. No change
1. No change
2. No change
3. No change

B. No change

~~R9-6-603.~~ R9-6-1203. Tuberculosis Control in Correctional Facilities

A. No change
1. No change
2. No change
a. No change
i. No change
ii. No change
b. No change
i. No change
ii. No change
c. No change
3. No change
4. No change
5. No change
6. No change
7. No change
8. No change
a. No change
b. No change
9. No change

B. No change

C. No change
1. No change
2. No change
3. No change

~~R9-6-604.~~ R9-6-1204. Standards of Medical Care

No change

NOTICE OF PROPOSED RULEMAKING

TITLE 17. TRANSPORTATION

CHAPTER 1. DEPARTMENT OF TRANSPORTATION ADMINISTRATION

[R07-276]

PREAMBLE

1. Sections affected: | **Rulemaking Action:**

R17-1-501	Amend
R17-1-502	Amend
R17-1-503	Amend
R17-1-504	New Section
R17-1-505	Renumber
R17-1-505	Amend
R17-1-506	Renumber
R17-1-506	Amend
R17-1-507	Renumber
R17-1-507	Amend
R17-1-508	Renumber
R17-1-508	Amend
R17-1-509	Renumber
R17-1-509	Amend
R17-1-510	Renumber
R17-1-510	Amend
R17-1-511	Renumber
R17-1-511	Amend
R17-1-512	Renumber
R17-1-512	Amend
R17-1-513	Renumber
R17-1-513	Amend
R17-1-514	New Section

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

Authorizing statute: A.R.S. § 28-366

Implementing statute: A.R.S. §§ 1-243, 28-1321, 28-1385, 28-1463, 28-2059(B), 28-3306, 28-3310, 28-4143, 28-4144, 28-4153, 28-4366, 28-4495, 28-4498, 28-4499, 28-4538, 28-4554, 28-5004, 28-5107, 28-5725, 28-5865, 28-5924, 28-7906, 28-8244, 41-1061, & 41-1062

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

Notice of Rulemaking Docket Opening: 13 A.A.R. 1563, May 4, 2007

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

Name: Janette M. Quiroz

Address: Administrative Rules Unit
Department of Transportation
Motor Vehicle Division
1801 W. Jefferson, MD 530M
Phoenix, AZ 85007

Telephone: (602) 712-8996

Fax: (602) 712-3081

E-mail: jmquiroz@azdot.gov

Please visit the ADOT web site to track progress of this rule and any other agency rulemaking matters http://www.azdot.gov/mvd/mvdrules/index.asp

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

The Division proposes to amend these rules by adding several Arizona Supreme Court Rules to provide a more clear, concise and understandable process as well as provide continuity to the Administrative Hearings rules.

Additional amendments were made which provide for timely filing of motions and subpoenas, as well as other non-substantive amendments.

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

The Division does not propose to review nor rely upon any study relevant to this rulemaking.

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

Not applicable

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

The Division anticipates a negligible economic impact to most parties as a result of this rulemaking.

However, the Division does anticipate that there will be an unquantifiable impact to either a petitioner or respondent as a result of the addition of timeliness as a consideration in the issuance of a subpoena. Adding timeliness as a consideration for subpoena may impact potential witnesses or materials subpoenaed as a request made in an untimely manner may cause an undue burden being placed upon either a person being subpoenaed, or a person responsible for providing material, under penalty of law.

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

Name:	Janette M. Quiroz
Address:	Administrative Rules Unit Department of Transportation Motor Vehicle Division 1801 W. Jefferson, MD 530M Phoenix, AZ 85007
Telephone:	(602) 712-8996
Fax:	(602) 712-3081
E-mail:	jmquiroz@azdot.gov

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

An oral proceeding is not scheduled for these proposed rules. To request an oral proceeding or to submit written, faxed, or e-mail comments, please contact the rules analyst listed in item 4 between the hours of 8:00 a.m. and 5:00 p.m., Monday through Friday, except legal holidays. If no request for an oral proceeding is made, the public record in this rulemaking will close on September 10, 2007.

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

None

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

None

13. The full text of the rules follows:

TITLE 17. TRANSPORTATION

CHAPTER 1. DEPARTMENT OF TRANSPORTATION ADMINISTRATION

ARTICLE 5. ADMINISTRATIVE HEARINGS

Section
R17-1-501. Definitions
R17-1-502. Request for Hearing
R17-1-503. Notice of Hearing

R17-1-504. Representation
~~R17-1-504.~~R17-1-505. Administrative Hearing Procedure
~~R17-1-505.~~R17-1-506. Administrative Hearing Evidence
~~R17-1-506.~~R17-1-507. Time Computation
~~R17-1-507.~~R17-1-508. Motion Practice
~~R17-1-508.~~R17-1-509. Subpoena Issuance
~~R17-1-509.~~R17-1-510. Document Filing
~~R17-1-510.~~R17-1-511. Continuing an Administrative Hearing
~~R17-1-511.~~R17-1-512. Rehearing and Judicial Review
~~R17-1-512.~~R17-1-513. Summary Review of an Administrative Suspension Order Under A.R.S. § 28-1385
~~R17-1-513.~~R17-1-514. Maintaining Administrative Hearing Decorum

ARTICLE 5. ADMINISTRATIVE HEARINGS

R17-1-501. Definitions

~~In this Article, unless a statute or specific rule otherwise requires~~ The following definitions apply to this Article unless otherwise required:

1. "Administrative hearing" means a scheduled ~~executive hearing office~~ Executive Hearing Office proceeding for deciding a dispute based on the evidence presented to an administrative law judge. An administrative hearing includes:
   a. Advance notice to participants of record,
   b. An opportunity for witnesses to testify under oath, and
   c. Presentation of documentary evidence.
2. "Administrative law judge" means a person who conducts a summary review or presides at an administrative hearing, with the powers listed ~~in R17-1-504(A) and R17-1-504(B)~~ under these rules.
3. "Affidavit" means a declaration or statement of facts made:
   a. In writing, and
   b. Under oath or affirmation.
4. "Agency action" means an action affecting a license, permit, certificate, approval, registration, or other permission issued by the Arizona Department of Transportation or the Division.
5. "Attorney" means:
   a. An individual who is an active member in good standing with the State Bar of Arizona,
   b. An individual approved to appear pro hac vice before the Executive Hearing Office pursuant to Rule 38(A) of the Arizona Supreme Court, and
   c. An individual authorized by Rule 31 of the Arizona Supreme Court to appear on behalf of another person or legal entity at a hearing before the Executive Hearing Office.

~~5.~~6. "Business day" means a day other than a Saturday, Sunday, or state holiday.
~~6.~~7. "Deposition" means a witness' testimony:
   a. Given under oath or affirmation,
   b. Brought out by another person's oral or written questions, and
   c. Reduced to writing for a proceeding.

~~7.~~8. "Director" means the Arizona Department of Transportation, Motor Vehicle Division Director.
~~8.~~9. "Division" means the Arizona Department of Transportation, Motor Vehicle Division.
~~9.~~10. "Executive ~~hearing office~~ Hearing Office" means the branch of the Director's office that conducts an administrative hearing or a summary review.
~~10.~~11. "In writing" means:
   a. An original document,
   b. A photocopy,
   c. A facsimile, or
   d. An electronic mail message.

~~11.~~12. "Motion" means a written or oral proposal for consideration and action filed by a person with the ~~executive hearing office~~ Executive Hearing Office.
~~12.~~13. "Participant of record" means:
   a. A petitioner or a respondent;
   b. An attorney representing a petitioner~~, a~~ or respondent, ~~or a person or entity under subsection (12)(c)~~; ~~and~~ or
   c. A person or entity with an interest in the subject matter of an administrative hearing as determined from Division records or from Arizona Department of Transportation records.

~~13.~~14. "Petitioner" means a person or entity that requests an administrative hearing or a summary review from the ~~executive hearing office~~ Executive Hearing Office.
~~14.~~15. "Respondent" means a person against whom relief is sought in an ~~executive hearing office~~ Executive Hearing

Office proceeding.

~~15.~~16. "Summary review" means an ~~executive hearing office~~ Executive Hearing Office proceeding~~, other than an administrative hearing~~, conducted under A.R.S. § 28-1385(L).

~~16.~~17. "Under oath or affirmation" means a witness' sworn statement made to a person with the power to administer an oath or affirmation.

R17-1-502. Request for Hearing

A. A petitioner or petitioner's attorney shall file a request for a hearing:
1. By mail or hand delivery to the ~~executive hearing office's~~ Executive Hearing Office's street address: Executive Hearing Office, Arizona Department of Transportation, Motor Vehicle Division, 3737 N. 7th ~~Street~~ St., Suite 160, Phoenix, AZ 85014-5017;
2. By fax to (602) 241-1624; or
3. By e-mail to the ~~executive hearing office's~~ Executive Hearing Office's electronic mail address: ~~HEARINGOFFICE@dot.state.az.us.~~ hearingoffice@azdot.gov.
4. Timeliness of filing is determined as of the date the ~~executive hearing office~~ Executive Hearing Office receives a ~~hearing~~ request for hearing.

B. ~~If a statute does not provide a period to request a hearing, the period lasts for~~ A request for hearing shall be submitted to the Executive Hearing Office within 15 days ~~after~~ of the date of an agency action notice.

C. A request for a hearing shall include the petitioner's name, ~~and~~ mailing address, and telephone number.

R17-1-503. Notice of Hearing

A. If a petitioner timely files a request for a hearing as provided under R17-1-502, the ~~executive hearing office~~ Executive Hearing Office shall send a notice of hearing to the petitioner's mailing address in the request for hearing and to any other participant of record.

B. The notice of hearing shall state the:
1. Time, date, and place of the administrative hearing,
2. Type of administrative hearing, and
3. Statutory authority for the administrative hearing.

R17-1-504. Representation

A. Prior to any appearance, a petitioner's or respondent's attorney licensed in a state other than Arizona, shall file with, and obtain approval from, the Executive Hearing Office the following documentation:
1. An original motion to appear pro hac vice,
2. The Notice of Receipt of Complete Application from the State Bar of Arizona, and
3. The original certificates of good standing from the Arizona State Bar of Arizona.

B. Documentation under subsection (B) shall be filed with the Executive Hearing Office within five business days from date of appearance.

C. Non-compliance with this Section shall result in the exclusion of a petitioner's or respondent's attorney licensed in a state other than Arizona from participation in an administrative hearing.

~~R17-1-504.~~ R17-1-505.Administrative Hearing Procedure

A. An administrative law judge shall preside at an administrative hearing and shall:
1. Administer oaths or affirmations;
2. Conduct fair and impartial hearings;
3. Have the parties state orally at the hearing their positions on the issues;
4. Rule on motions filed ~~according~~ under ~~to R17-1-507~~ R17-1-508;
5. Maintain an administrative hearing record; ~~and~~
6. Issue a written decision, including findings of fact and conclusions of law, based on the record~~.~~, and
7. Sustain an agency action supported by the record and state law.

B. In addition to the requirements of subsection (A), an administrative law judge may:
1. Issue a subpoena for the attendance of a relevant ~~witnesses~~ witness or for the production of relevant documents or things, ~~or~~ and
2. Question a witness.

C. An administrative law judge may order summary suspension of a license according to A.R.S. § 41-1064(C).

~~**D.** An administrative law judge shall sustain an agency action supported by the record and the law.~~

~~E.~~D. A.R.S. § 41-1063 applies to the contents and service of an administrative hearing decision.

E. A participant of record shall not communicate, either directly or indirectly, with the administrative law judge about any substantive issue in a pending matter unless:
1. All participants of record are present;
2. Communication is during a scheduled proceeding, where an absent participant of record fails to appear after proper

notice; or
3. Communication is by written motion with copies to all participants of record.

F. At the request of a participant of record or at the judge's discretion, an administrative law judge may order a witness excluded from the hearing room except:
1. A participant of record, or
2. A person whose presence is shown to be essential to the presentation of a participant of record's case.

~~R17-1-505.~~ R17-1-506. Administrative Hearing Evidence

A. A.R.S. §§ 41-1062(A)~~(1) through 41-1062(A)(3) apply~~ applies to evidence offered in an administrative hearing.

B. ~~If a witness cannot be subpoenaed or is unable to attend an administrative hearing, the~~ The administrative law judge may admit ~~the~~ a witness' deposition or affidavit and determine its evidentiary weight. The party taking a witness' deposition or affidavit shall bear all deposition-related or affidavit-related costs.

~~R17-1-506.~~ R17-1-507.Time Computation

In computing a time period under this Article, the ~~executive hearing office~~ Executive Hearing Office shall:
1. Exclude the day of the act triggering the period;
2. If the last day is a Saturday, Sunday, or legal holiday, extend the period to the end of the next business day;
3. If the period is 10 days or less, count only the business days; and
4. If service is by mail, extend the period by five days.

~~R17-1-507.~~ R17-1-508.Motion Practice

A. A party or a party's attorney making a motion shall state in the motion the relief sought, the factual basis, and the legal authority for the requested relief.
1. For a pre-hearing motion, a party or a party's attorney shall:
   a. Make the motion in writing, and
   b. File the motion with the ~~executive hearing office~~ Executive Hearing Office at least five business days before the administrative hearing.
2. For a motion made at an administrative hearing:
   a. A party or a party's attorney may make the motion orally, and
   b. The administrative law judge may require the party or the party's attorney to file the motion in writing.

B. An administrative law judge may include a ruling on a motion in an administrative hearing decision.

~~R17-1-508.~~ R17-1-509.Subpoena Issuance

A. In connection with an administrative hearing, an administrative law judge may issue a subpoena to compel the attendance of a witness or the production of documents or things.
1. A party or a party's attorney requesting a subpoena shall file a written subpoena request, briefly stating the substance of the evidence sought and why the evidence is necessary for the hearing.
2. An administrative law judge has discretion to issue or deny a subpoena based on the:
   a. Relevance of the evidence sought, ~~or~~
   b. Reasonable need for the evidence sought, and
   c. Timeliness of the request.

B. A party or a party's attorney requesting a subpoena shall:
1. Draft the subpoena in the correct format, including:
   a. The caption and docket number of the matter;
   b. A list of documents or things to be produced;
   c. The full name and address of:
      i. The custodian of the documents or things listed, or
      ii. The person ordered to appear;
   d. The time, date, and place to appear or to produce documents or things; and
   e. The name, address, and telephone number of the party or the party's attorney requesting the subpoena;
2. Obtain an administrative law judge's signature on the subpoena,
3. Ensure service of the subpoena on the person named in the subpoena under subsection (C), and
4. Bear all subpoena-related costs.

C. Unless otherwise provided by statute or administrative rule, a party or a party's attorney requesting a subpoena shall have the subpoena served by a person who:
1. Is at least age 18 and is not a party to the administrative hearing;
2. Delivers, within Arizona, a copy of the subpoena to the person named in the subpoena;
3. If the subpoena requires the named person's attendance at an administrative hearing, hands the named person the amount prescribed in A.R.S. § 12-303 as the witness fee for one day's attendance and allowed mileage; and
4. Files with the ~~executive hearing office~~ Executive Hearing Office a proof of service, signed by the person who served

the subpoena, certifying:
a. The date of service,
b. The manner of service, and
c. The name of the person served.

D. A party or a person served with a subpoena who objects to the subpoena or a portion of the subpoena, may file an objection in writing with the ~~executive hearing office~~ Executive Hearing Office. The party or person served with the subpoena shall:
1. State in the objection the reasons for objecting; and
2. File the objection:
   a. Within five days after service of the subpoena; or
   b. If the subpoena is served less than five days before an administrative hearing, at the start of the hearing.

E. An administrative law judge may quash or modify a subpoena if:
1. The subpoena is unreasonable or imposes an undue burden, or
2. The evidence sought may be obtained by another method.

F. Unless otherwise provided by statute or administrative rule, a party or a party's attorney requesting a subpoena or the Arizona Department of Transportation shall enforce the subpoena in the Superior Court of Arizona, in the county where the administrative hearing is held.

~~R17-1-509.~~ R17-1-510.Document Filing

A. A document filed in an ~~executive hearing office~~ Executive Hearing Office proceeding shall state:
1. The description and title of the proceeding,
2. The name of the party filing the document,
3. The date the document is signed,
4. The title and address of the document's signer, and
5. If applicable, the attorney's name, state bar number, law firm, address, and telephone number.

B. A party or a party's attorney shall sign a document filed with the ~~executive hearing office~~ Executive Hearing Office. By signing, the signer certifies that:
1. The signer read the document;
2. The document is supported by the facts and the law or by a good faith argument to extend, modify, or reverse the law; and
3. The document is not filed to harass, delay, or needlessly increase the cost of the ~~executive hearing office~~ Executive Hearing Office proceeding.

C. A document is filed as of the date the ~~executive hearing office~~ Executive Hearing Office receives the document.

~~R17-1-510.~~ R17-1-511.Continuing an Administrative Hearing

A. An administrative hearing participant of record requesting a continuance shall file the request with the Executive Hearing Office at least seven business days before the hearing. The continuance request shall state a reason for continuing the administrative hearing.

B. An administrative law judge shall not grant a continuance unless the participant of record establishes good cause for the continuance. ~~For an untimely request, the administrative law judge shall not grant the request unless the participant of record establishes good cause for the delay in filing the request.~~

C. ~~An administrative law judge shall include in the record the reason for denying a continuance~~. An administrative law judge shall not grant a request for continuance with is untimely unless the participant of record establishes good cause for the delay in filing the request.

~~R17-1-511.~~ R17-1-512.Rehearing and Judicial Review

A. A party may file a written motion for rehearing with the executive hearing office, stating in detail the reasons a rehearing should be granted. ~~Unless otherwise provided by statute, a motion for rehearing is timely if received by the executive hearing office within:~~
~~1. Fifteen days after the date of in-person service of the administrative hearing decision, or~~
~~2. Fifteen days after the mailing date of the administrative hearing decision.~~

B. Unless otherwise provided by statute, a motion for rehearing is timely if received by the Executive Hearing Office within:
1. Fifteen days after the date of in-person service of the administrative hearing decision, or
2. Fifteen days after the mailing date of the administrative hearing decision.

~~B.~~C. A timely motion for rehearing stays an agency action, other than:
1. A summary suspension under A.R.S. § 41-1064(C), or
2. An agency action sustained under subsection ~~(I)~~(J).

~~C.~~D. An administrative law judge may grant a rehearing for any of the following reasons materially affecting a party's rights:
1. Irregularity in the proceedings of the Arizona Department of Transportation or the Division, or any order or abuse of discretion, that deprived the moving party of a fair hearing;

2. Misconduct of the Arizona Department of Transportation or the Division, its staff, an administrative law judge, or the prevailing party;
3. Accident or surprise that could not have been prevented by ordinary prudence;
4. Newly discovered material evidence that could not, with reasonable diligence, have been discovered and produced at the hearing;
5. Excessive penalty;
6. Error in the admission or rejection of evidence or other errors of law occurring at the hearing or during the progress of the proceedings;
7. That the administrative hearing decision is a result of passion or prejudice; or
8. That the findings of fact or decision is not justified by the evidence or is contrary to law.

~~D.~~**E.** An administrative law judge may affirm or modify an administrative hearing decision or grant a rehearing to all or any of the parties on all or part of the issues for any of the reasons in subsection ~~(C)~~ (D). An order modifying an administrative hearing decision or granting a rehearing shall specify ~~with particularity~~ the grounds for the order.

~~E.~~**F.** ~~In spite of any motion for rehearing, an~~ An administrative law judge may order a rehearing for a reason listed in subsection ~~(C)~~(D).

~~F.~~**G.** An administrative law judge may require the filing of written briefs on the issues raised in a motion for rehearing.

~~G.~~**H.** When a motion for rehearing is based upon affidavits, they shall be served with the motion. An opposing party may, within 15 days after service, serve opposing affidavits. An administrative law judge may extend this period for a maximum of 20 days for good cause as described in subsection ~~(H)~~ (I) or by written stipulation of the parties. Reply affidavits may be permitted at the discretion of the administrative law judge.

~~H.~~**I.** An administrative law judge may extend the time limits in subsections (A) and ~~(G)~~ (H) upon a showing of good cause. A party demonstrates good cause by showing that the grounds for the party's motion or other action could not have known in time, using reasonable diligence, and a ruling on the motion will:
1. Further administrative convenience, expedition, or economy; or
2. Avoid undue prejudice to any party.

~~I.~~**J.** An administrative law judge shall issue an administrative hearing decision as a final decision without an opportunity for a rehearing if the administrative law judge makes specific findings that:
1. The public health, safety, and welfare require immediate effectiveness of the administrative hearing decision; and
2. A rehearing of the decision is impractical, unnecessary, or contrary to the public interest.

~~J.~~**K.** A party may appeal or request judicial review of a final administrative hearing decision in the Superior Court of Arizona as provided by statute.

~~R17-1-512.~~R17-1-513.Summary Review of an Administrative Suspension Order under A.R.S. § 28-1385

A. A petitioner issued a driving privilege suspension order under A.R.S. § 28-1385, may request summary review instead of a hearing.
1. The requirements of R17-1-502 apply to a summary review request.
2. The petitioner or the petitioner's attorney may include with the summary review request a written statement of:
   a. The reasons why the Division should not suspend the petitioner's driving privilege, and
   b. ~~Evidence that~~ Reasons to find that at least one issue in subsections (C)(1) through (C)(3) is not met by the affidavit filed by a law enforcement officer with the Department.

B. An administrative law judge conducting summary review of a suspension order under A.R.S. § 28-1385 shall:
1. Conduct the summary review without the petitioner's presence,
2. Examine the documents in the ~~executive hearing office~~ Executive Hearing Office case file, and
3. Issue a written summary review decision sustaining or voiding the suspension order.

C. An administrative law judge conducting summary review of a suspension order under A.R.S. § 28-1385 shall consider the following factors:
1. Whether the law enforcement officer's certified report reflects the officer had reasonable grounds to believe the petitioner was driving or in actual physical control of a motor vehicle while under the influence of intoxicating liquor;
2. Whether the law enforcement officer's certified report reflects the officer placed the petitioner under arrest for a violation of A.R.S. §§ 4-244(33), 28-1381, 28-1382, or 28-1383, and the petitioner complied with A.R.S. § 28-1321;
3. Whether the law enforcement officer's certified report reflects petitioner's test results indicating at least the applicable alcohol concentration stated in A.R.S. § 28-1385; and
4. Whether the petitioner's written statement of the reasons why the Division should not suspend the petitioner's driving privilege provides convincing evidence that at least one issue in subsections (C)(1) through (C)(3) was not met.

~~R17-1-513.~~R17-1-514.Maintaining Administrative Hearing Decorum

A. All hearings are open to the public, however ~~A~~ a person shall not interfere with access to or from a hearing room, or interfere, or threaten interference with a hearing. ~~If a person interferes, threatens interference, or disrupts a hearing, the administrative law judge may order the disruptive person to leave or be removed.~~

B. If a person interferes, threatens interference, or disrupts a hearing, the administrative law judge may order the disruptive person to leave or be removed.

NOTICE OF PROPOSED RULEMAKING

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 12. DEPARTMENT OF ENVIRONMENTAL QUALITY UNDERGROUND STORAGE TANKS

[R07-274]

PREAMBLE

1. **Sections Affected** — **Rulemaking Action**

R18-12-101	Amend
R18-12-263	Amend
R18-12-263.04	New Section
R18-12-264.01	Amend
Article 9	New Article
R18-12-901	New Section
R18-12-902	New Section
R18-12-903	New Section

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

Authorizing statutes: A.R.S. §§ 49-104(B)(4), 49-104(B)(16)

Implementing statute: A.R.S. §§ 49-1005, 49-1015.01, 49-1052

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

Notice of Rulemaking Docket Opening: 12 A.A.R. 3570, September 29, 2006

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

Name: Joseph Karl Drosendahl

Address: 1110 W. Washington St.
Phoenix, AZ 85007

Telephone: (602) 771-4845

Fax: (602) 771-4346

E-mail: Drosendahl.joseph@azdeq.gov

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

Summary

The Arizona Department of Environmental Quality (ADEQ) is considering rules: 1) for issuance of no further action (NFA) letters for leaking underground storage tank (LUST) sites once the source has been removed and a corrective action plan or state assurance fund work plan has been approved that includes monitored natural attenuation (MNA); 2) to implement the MNA account to be used by ADEQ to continue to monitor LUST sites that have been issued an NFA letter and to perform additional corrective actions if necessary, and 3) allowing ADEQ to close certain groundwater LUST cases where there is an exceedance of the aquifer water quality standards.

History

A.R.S. § 49-1005(E) allows the Department to close certain leaking underground storage tank (LUST) sites where groundwater quality exceeds water quality standards. Senate Bill (SB) 1306 (46th Legislature, 2nd regular session, 2004) created the No Further Action (NFA) letter, and the Regulated Substance Fund which includes the Monitored Natural Attenuation (MNA) Account.

As of June 1, 2007, the cumulative number of LUSTs reported was 8,299. Of these, 84 percent, or 6,975 had been closed and 16 percent or 1,324 remained open. Currently there are approximately 800 known LUST associated with groundwater contamination.

The State Assurance Fund (SAF) was created in 1993, to provide funding to certain UST owners and operators in order to perform corrective actions at eligible LUST sites. However, SB 1306 phased out the SAF, and therefore, after

June 30, 2010, UST owners will have to access their required financial assurance mechanism to pay for corrective action costs.

In accordance with SB 1306, UST releases reported after June 30, 2006, are not eligible for SAF reimbursement, and pre-approval work plans will not be accepted after June 30, 2009. After June 30, 2010, SAF applications will not be accepted, and on July 1, 2011, monies remaining in the SAF will be deposited into the Regulated Substance Fund.

Throughout the process of developing this rulemaking, the Department has involved UST stakeholders. The Department convened a series of stakeholder meetings in 2007, with the purpose of discussing the rulemaking. Participants included members of the business community, UST owners and operators, environmental consultants, the interested public, and regulators. In addition, the UST Policy Commission reviewed the draft rule and recommended approval of the rule with a couple of modifications that were incorporated.

Agency's reason for initiating the rule

SB 1306, Section 12 states, "The director of environmental quality shall adopt rules to implement sections 1, 2 and 9 of this act, including rules that may relate to the imposition of reasonable fees for review of reports related to releases and corrective actions after June 30, 2011." Further, in accordance with A.R.S. § 49-1052(N), the Department can only issue a NFA letter on adoption of rules, and after other requirements specified in that Section are met. Lastly, in accordance with A.R.S. § 49-1005(E), to allow the Department to close certain groundwater leaking underground storage tank (LUST) sites with water quality exceeding water quality standards, the Department director shall adopt rules to implement this process. This rulemaking is intended to meet the requirements of SB 1306, Section 12 and A.R.S. § 49-1005(E).

General Description of the Programs Created by SB1306

Two aspects of SB1306 are addressed in this rulemaking: the MNA program and a new process for the Department to address groundwater LUST case closures.

In certain circumstances, groundwater cleanup can be achieved by allowing natural processes to take their course. These "natural attenuation" processes include physical, chemical, and biological processes. SB 1306 created a program for assisting UST owners and operators in paying for corrective actions even after the SAF eligibility expires on June 30, 2010. The MNA Program applies to SAF eligible LUST sites and is strictly a voluntary program. The MNA Account will be available to the Department to finance continued corrective actions, if UST owners and operators meet the conditions of the MNA Program. Under the MNA Program, the Department would issue a NFA letter to the UST owner or operator, which relieves the UST owner or operator from performing further corrective actions. NFA letters are not LUST case closure letters. The Department will conduct monitoring to track the natural attenuation process until the site is eligible for LUST case closure. These rules set forth the requirements for the MNA program.

The new process for groundwater LUST case closures is not related to the MNA Program or NFA letters. The process applies to certain SAF and non-SAF LUST sites. While public notice will be required, a DEUR would not be required. The Arizona Department of Water Resources will be notified, and ADEQ intends to maintain a list of sites closed under this rule which will be available to the public.

Section-by-Section explanation of the proposed amendment

This section of the preamble describes specific changes in the proposed amendment to the existing rule. The Department has tried to address comments received and questions raised at the stakeholder meetings, as well as comments received subsequent to those meetings.

R18-12-101. Definitions:

This Section adds three new definitions to the existing definitions: monitored natural attenuation, natural attenuation, and source of contamination.

R18-12-263. Remedial Response

Subsection (B) is amended to include the citation to R18-12-263.04 which is the proposed alternative process for obtaining LUST case closures for certain LUST sites that have exceeded the aquifer water quality standards.

R18-12-263.04. Groundwater LUST case closures:

Subsection (A) specifies two ways that ADEQ can approve corrective actions that result in exceeding the AWQS: under the existing rule, and under this new Section.

Subsection (B) lists site specific information that ADEQ will consider in making the decision to close a LUST case.

Subsection (C) requires ADEQ to provide public notice when considering LUST case closure under this new Section.

Subsection (D) explains conditions for approving LUST case closure under this new Section.

Subsection (E) requires ADEQ to notify the UST owner and operator when approving LUST case closure under this new Section.

Subsection (F) specifies conditions that would warrant ADEQ to re-open the LUST case and require additional corrective actions.

R18-12-264.01. Public Participation:

This Section amends existing rule Section to make it applicable for groundwater LUST case closures.

R18-12-901. Regulated Substance Fund:

Subsection (A) describes the regulated substance fund.

R18-12-902. Monitored Natural Attenuation (MNA) Account:

Subsection (A) describes the uses of the MNA account.

Subsection (B) describes the disposition of funds remaining in the MNA Account after all MNA Program LUST sites have been closed.

R18-12-903. Monitored Natural Attenuation (MNA) Program:

Subsection (A) specifies which LUST sites are eligible for this new program.

Subsection (B) describes the contents of the MNA Program application.

Subsection (C) explains the conditions for approving the MNA Program application.

Subsection (D) requires ADEQ to notify the applicant when approving the MNA Program application.

Subsection (E) describes the contents of a no further action letter.

Subsection (F) describes the future corrective actions that will be performed by ADEQ.

Subsection (G) describes the conditions under which ADEQ may rescind the approval of a MNA Program application and no further action letter.

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

Not applicable

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

Not applicable

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

Rule Identification. This rulemaking proposes to amend 18 A.A.C. 12, Articles 1 and 2, and creates a new Article 9. Refer to item 5 of the preamble for additional information.

Entities Affected. ADEQ expects this rulemaking to impact the following classes of persons: public (including people living near leaking underground storage tanks and prospective purchasers of real property); UST owners and operators of leaking undergrounds storage tank (LUST) sites; businesses conducting remediation; and ADEQ as the implementer

Brief Overview of Changes and Applicability.

These rules would: 1) allow for issuance of a no further action (NFA) letter for leaking underground storage tank (LUST) sites once the source has been removed and a corrective action plan or state assurance fund work plan has been approved that includes monitored natural attenuation (MNA); 2) allow ADEQ to close certain groundwater LUST cases where there is an exceedance of the aquifer water quality standards, and 3) implement the MNA account that will be used by ADEQ to continue to monitor LUST sites that have been issued an NFA letter and to perform additional corrective actions if necessary.

As of June 1, 2007, the cumulative number of UST releases reported to ADEQ was 8,299. Of these, 84 percent, or 6,975 had been closed and 16 percent or 1,324 remained open. Currently there are approximately 800 known LUST associated with groundwater contamination. These proposed rules would provide options for the 800 known LUST associated with groundwater contamination.

Cost-Benefit Analysis.

ADEQ expects this rulemaking to generate benefits that easily exceed the costs associated with those benefits.

Proposed R18-12-903 provides for the issuance of a no further action letter to an UST owner or operator of a LUST site, or a person undertaking corrective action there, if the site qualifies for the monitored natural attenuation program (MNA). A no further action letter means that ADEQ will not require the UST owner or operator of a LUST site to perform additional corrective action at the site. The letter also provides an economic benefit to the property owner by

reducing the uncertainty associated with the contamination at the site, allowing the property to be more easily sold or used as collateral, and allowing it to be developed with reduced concerns of environmental liability. There is minimal cost to the UST owner or operator of a LUST site in preparing and submitting an application for the MNA Program. ADEQ provides the required public notice at no cost to the applicant. Costs associated with source control or removal which must be performed prior to obtaining a no further action letter may be reimbursed under the SAF (State Assurance Fund).

Proposed R18-12-263.04 provides an alternative way of reducing uncertainty at a LUST site with groundwater contamination, by allowing ADEQ to close certain groundwater LUST cases where there is an exceedance of the aquifer water quality standards. ADEQ will consider site specific conditions such as complete source control or removal, and the existence of natural attenuation before approving LUST case closure. LUST case closure means that corrective action on the site is complete. LUST case closure provides an economic benefit to the property owner by ending the uncertainty associated with the contamination at the site, allowing the property to be more easily sold or used as collateral, and allowing it to be developed without concerns of environmental liability. In addition, proposed R18-12-263.04 allows ADEQ to approve closure without an institutional control, which means that the owner or operator can save the costs of drafting a declaration of environmental use restriction (DEUR), submitting it for approval, recording it, and submitting annual reports to ADEQ. There is minimal cost to the UST owner or operator of a LUST site to submit a request for LUST case closure, and ADEQ provides for the required public notice at no cost to the applicant. With groundwater LUST case closures, costs associated with source control or removal may be reimbursed under SAF, if the LUST site is eligible for the SAF.

Businesses Conducting Remediation. Both of the above rule changes facilitate employing monitored natural attenuation and thereby may discourage owners and operators to contract with persons in the business of providing active remediation services. As a result, there is the potential for a negative impact on these persons in the business of providing remediation services.

Impact on ADEQ. For sites that are accepted into the MNA program, ADEQ will assume the necessary monitoring and other related activities. Under A.R.S. § 49-1015.01(D), these costs are to be paid out of the monitored natural attenuation account of the regulated substances fund. The cost of making this rule is minimal, and will be outweighed by the benefits to UST owners and operators of LUSTs described above.

The rest of the changes in the rule support the above items. In particular, proposed R18-12-901 and 902 are included to provide clarity about the sources of funding for these rules.

Employment/Revenue Impacts. No incremental changes in public or private employment are foreseen as a result of this rulemaking. This rulemaking is not expected to negatively impact state revenues.

Small Businesses Subject to the Rule. Some of the businesses owning or operating UST sites with known LUST could be classified as small businesses. The rules treat all entities the same and do not differentiate requirements based on business size. Because this rule is expected to result in benefits to all owners and operators, ADEQ has not tried to isolate the impact on small businesses or identify alternatives for reducing those impacts on small businesses.

Reduction of Impact on Small Businesses. A.R.S. § 41-1035 requires state agencies to reduce the impact of a rulemaking on the class of small businesses, if possible. ADEQ has determined that the statutes require that the rules apply to all entities owning or operating USTs whether or not they are small businesses because the requirements in statute are based on potential adverse health effects from contamination regardless of the size of the business owning or operating USTs. The statutory objectives which are the basis of the rules require ADEQ to establish requirements that are protective of human health and the environment based on the potential human exposure to contaminated soil and groundwater. ADEQ was not able to reduce the impact of these rules for small businesses in a way that meets statutory requirements.

Less Intrusive or Less Costly Alternatives. No less intrusive or less costly alternatives were authorized by the legislature or contemplated by ADEQ.

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

Name:	Joseph Karl Drosendahl
Address:	1110 W. Washington St. Phoenix, AZ 85007
Telephone:	(602) 771-4845
Fax:	(602) 771-4346
E-mail:	Drosendahl.joseph@azdeq.gov

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

Date: September 17, 2007

Time: 2:00 p.m.
Location: Department of Environmental Quality
1110 W. Washington St., Suite 250
Phoenix, AZ 85007

Date: September 20, 2007
Time: 2:00 p.m.
Location: Department of Environmental Quality
400 W. Congress St., Suite 444
Tucson, AZ 85701

Nature: Public hearing on the proposed rule, with opportunity for formal comments on the record. Please call (602) 771-4795 for special accommodations pursuant to the Americans with Disabilities Act.

Written comments will be accepted through September 28, 2007, at 5:00 p.m. Written comments should be addressed to the person listed in item 4.

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

None

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

None

13. The full text of the rule follows:

TITLE 18. ENVIRONMENTAL QUALITY

CHAPTER 12. DEPARTMENT OF ENVIRONMENTAL QUALITY
UNDERGROUND STORAGE TANKS

ARTICLE 1. DEFINITIONS; APPLICABILITY

Section
R18-12-101. Definitions

ARTICLE 2. TECHNICAL REQUIREMENTS

Section
R18-12-263. Remedial Response
R18-12-263.04. Groundwater LUST Case Closures
R18-12-264.01. Public Participation

ARTICLE 9. REGULATED SUBSTANCE FUND

Section
R18-12-901. Regulated Substance Fund
R18-12-902. Monitored Natural Attenuation (MNA) Account
R18-12-903. Monitored Natural Attenuation (MNA) Program

ARTICLE 1. DEFINITIONS; APPLICABILITY

R18-12-101. Definitions

In addition to the definitions prescribed in A.R.S. §§ 49-1001 and 49-1001.01, the terms used in this Chapter have the following meanings:

"Accidental release" No change

"Ancillary equipment" No change

"Annual" No change

"Applicant" No change

"Application" No change

"Assets" No change
"Aviation fuel" No change
"Bodily injury" No change
"CAP" No change
"Cathodic protection" No change
"Cathodic protection tester" No change
"CERCLA" No change
"CFR" No change
"Change-in-service" No change
"Chemical of concern" No change
"Chief financial officer" No change
"Clean Water Act" No change
"Compatible" No change
"Conceptual site model" No change
"Connected piping" No change
"Consultant" No change
"Contamination" No change
"Contractor" No change
"Controlling interest" No change
"Copayment" No change
"Corrective action rules" No change
"Corrective action service provider" No change
"Corrective action services" No change
"Corrective action standard" No change
"Corrosion expert" No change
"Cost work sheet" No change
"Current assets" No change
"Current liabilities" No change
"Decommissioning" No change
"De minimis" No change
"Department" No change
"Derived waste" No change
"Dielectric material" No change
"Diesel" No change
"Director" No change
"Direct payment" No change
"Direct payment request" No change
"Electrical equipment" No change
"Eligible activities" No change
"Eligible person" No change
"Emergency power generator" No change
"Engineering Control" No change
"Excavation zone" No change
"Excess lifetime cancer risk level" No change
"Existing tank system" No change
"Exposure" No change

"Exposure assessment" No change
"Exposure pathway" No change
"Exposure route" No change
"Facility" No change
"Facility identification number" No change
"Facility location" No change
"Facility name" No change
"Farm tank" No change
"Financial reporting year" No change
"Firm" No change
"Flow-through process tank" No change
"Free product" No change
"Gathering lines" No change
"Grant request" No change
"Groundwater" No change
"Hazard Index" No change
"Hazard quotient" No change
"Hazardous substance UST system" No change
"Heating oil" No change
"Hydraulic lift tank" No change
"IFCI" No change
"Implementing agency" No change
"Incremental cost" No change
"Incurred" No change
"Indian country" No change
"Induration" No change
"Installation" No change
"Institutional control" No change
"Legal defense cost" No change
"Liquid trap" No change
"Local government" No change
"LUST" No change
"LUST case" No change
"LUST number" No change
"LUST site" No change
"Maintenance" No change
"Monitored natural attenuation" means the reliance on natural attenuation processes, within the context of a carefully controlled and monitored site cleanup approach, to achieve site-specific remediation objectives within a time frame that is reasonable compared to that offered by other more active methods.
"Motor vehicle fuel" No change
"Natural attenuation" means a reduction in mass or concentration of a chemical of concern in groundwater over time or distance from the release point due to naturally occurring physical, chemical, and biological processes, such as: biodegradation, dispersion, dilution, sorption, and volatilization.
"Nature of the regulated substance" No change
"Nature of the release" No change
"New tank system" No change
"Noncommercial purposes" No change

"On-site control" No change
"On the premises where stored" No change
"Operational life" No change
"Overfill" No change
"Owner identification number" No change
"Petroleum marketing facility" No change
"Petroleum marketing firm" No change
"Petroleum UST system" No change
"Phase of corrective action" No change
"Pipe" or "Piping" No change
"Pipeline facility" No change
"Point of compliance" No change
"Point of exposure" No change
"Property damage" No change
"Provider of financial assurance" No change
"RCRA" No change
"Receptor" No change
"Release confirmation" No change
"Release confirmation date" No change
"Release detection" No change
"Remediation" No change
"Repair" No change
"Report of work" No change
"Reserved and designated funds" No change
"Residential tank" No change
"Retrofit" No change
"Risk characterization" No change
"Routinely contains product" or "routinely contains regulated substance" No change
"SARA" No change
"Septic tank" No change
"Site location map" No change
"Site plan" No change
"Site Vicinity Map" No change
"Solid Waste Disposal Act" No change
"Source area" No change
"Source of contamination" means with respect to this Chapter, the conditions described in A.R.S. § 49-1052(N).
"Spill" No change
"Storage facility" No change
"Storm-water or wastewater collection system" No change
"Submitted" No change
"Substantial business relationship" No change
"Substantial governmental relationship" No change
"Substituted work item" No change
"Summary of work" No change
"Supplier" No change
"Supplier identification number" No change

"Surface impoundment" No change
"Surface water" No change
"Surficial soil" No change
"Suspected release discovery date" No change
"Suspected release notification date" No change
"Tangible net worth" No change
"Task" No change
"Tax" No change
"Taxpayer" No change
"Tester" No change
"Underground area" No change
"Underground storage tank" No change
"Under review" No change
"Unreserved and undesignated funds" No change
"Upgrade" No change
"UST" No change
"UST grant account" or "grant account" No change
"UST regulatory program" No change
"UST system" or "tank system" No change
"Vadose zone" No change
"Volatile regulated substance" No change
"Volunteer" No change
"Wastewater treatment tank" No change
"Work item" No change
"Work objectives of the preapproved work plan" No change

ARTICLE 2. TECHNICAL REQUIREMENTS

R18-12-263. Remedial Response

A. No change
B. Remedial response required. The owner or operator shall remediate contamination at and from the LUST site as required by this Section. Remediation activities shall continue until:
1. Contaminant concentration of any chemical of concern, in each contaminated medium, at the point of compliance, is documented to be at or below the corrective action standard determined in R18-12-263.01; ~~and~~
2. The requirements for LUST case closure in R18-12-263.03 are completed and approved by the Department~~.~~; or
3. The requirements for groundwater LUST case closure in R18-12-263.04 are met and approved by the Department.

C. No change
1. No change
2. No change
3. No change
   a. No change
   b. No change
   c. No change

D. No change
1. No change
2. No change
3. No change
4. No change

E. No change
1. No change
2. No change
3. No change
4. No change

5. No change

F. No change
1. No change
   a. No change
   b. No change
2. No change
3. No change

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

R18-12-263.04. Groundwater LUST Case Closures

A. Applicability. Pursuant to A.R.S. § 49-1005(E), the Director may approve a corrective action that may result in aquifer water quality exceeding aquifer water quality standards established under A.R.S. § 49-223, after completion of the corrective action in accordance with one of the following:
1. A Tier 2 or Tier 3 evaluation in accordance with R18-12-263.01(A)(2) or (3); and (4); or
2. The process described in this Section.

B. Site-specific requirements. The Director may approve LUST case closure where there is an exceedance of an aquifer water quality standard without requiring the placement of institutional controls on the deeds of all properties affected by the groundwater contamination related to the UST release, after consideration of the following:
1. Characterization of the groundwater plume;
2. Removal or control of the source of contamination;
3. Groundwater plume stability;
4. Natural attenuation;
5. Threatened or impacted drinking water wells;
6. Other exposure pathways;
7. Requirements of A.R.S. § 49-1005(D) and (E), and
8. Other information that may be pertinent to the LUST case closure approval.

C. Public notice. If, after consideration of the criteria specified in subsection (B), the Department determines that the LUST site is eligible for LUST case closure, the Department shall provide public notice in accordance with R18-12-264.01.

D. Conditions for approval of LUST case closure. After consideration of comments obtained through the public notice process, the Department shall evaluate whether the LUST case meets the requirements of this Section and A.R.S. § 49-1005; and determine if the LUST case closure can be approved.

E. Notice of LUST case closure decision. The Department shall provide written notice to the owner or operator whether the LUST case closure is approved.

F. Future corrective actions. Subsequent to LUST case closure, if the Department becomes aware of site-specific conditions that warrant additional corrective actions, the LUST case file may be re-opened. Future corrective actions shall be performed as follows:
1. If a no further action letter in accordance with R18-12-903(D) has not been issued for the release or has been rescinded in accordance with R18-12-903(G), the UST owner or operator shall perform additional corrective actions necessary to comply with the requirements of R18-12-261 through R18-12-264.01; or
2. If a no further action letter issued by the Department in accordance with R18-12-903(D) is in effect, the additional corrective actions will be performed by the Department in accordance with A.R.S. §§ 49-1015.01 and 49-1017.

R18-12-264.01. Public Participation

A. Public notice. If public notice is required by A.R.S. § 49-1005, or rules made under that Section, the Department shall provide a minimum of 30 calendar days notice to the public regarding a public comment period. The Department shall use a ~~methods~~ method of public notice designed to reach those members of the public directly affected by the release and the planned corrective actions ~~including~~, which may include, but is not limited to one or more of the following: publication in a newspaper of general circulation, posting at the facility, mailing a notice to ~~owners of property affected or potentially affected by contamination from the release and corrective actions~~ applicable persons, or posting on the Department's internet site. ~~If a CAP includes a corrective action standard for water based on a Tier 2 or Tier 3 evaluation, the Department shall send a copy of the notice to the Arizona Department of Water Resources, the applicable county and any municipality where the CAP will be implemented, water service providers and persons having water rights that may be impacted by the release.~~ At a minimum, the notice shall be sent to the following applicable persons:

1. The UST owner and operator;
2. Owners of property and other parties directly affected or potentially directly affected by contamination from the release, corrective actions, or LUST case closure;
3. The Arizona Department of Water Resources;
4. The applicable county and municipality; and
5. Water service providers and persons having water rights that may be impacted by the release.

B. Public notice contents. The Department shall provide notice to the public that includes all of the following:
1. Identifies the name of the document ~~submitted to the Department~~ that is available for public comment;
2. Identifies the facility where the release occurred and the site of the proposed corrective actions, or LUST case closure in accordance with R18-12-263.04.
3. If the document is a CAP, identifies the date the ~~document~~ CAP was submitted to the Department and name of person who submitted the ~~document~~ CAP;
4. Provides a specific explanation if a corrective action standard for water is based on a Tier 2 or Tier 3 evaluation;
5. Identifies ~~at least 2 locations~~ the location where a copy of the document can be viewed by the public~~, including the Department's Phoenix office and the public library located nearest to the LUST site~~;
6. Explains that any comments on the document shall be sent to the Underground Storage Tank Program of the Department within the time frame specified in the notice; and
7. Describes the public meeting provisions of subsection (C).

C. Public meeting. ~~After consideration of the amount of public interest, and before approving a document requiring public participation, the~~ The Department may hold a public meeting to receive comments on a document undergoing public review. If the Department holds a public meeting, the Department shall schedule the meeting and notify the public, in accordance with subsection (A), of the meeting time and location.

ARTICLE 9. REGULATED SUBSTANCE FUND

R18-12-901. Regulated Substance Fund

Regulated substance fund. Monies in the regulated substance fund created under A.R.S. § 49-1015.01 and deposited in the fund on and after July 1, 2011, except those in the monitored natural attenuation account, may be used by the director to perform corrective actions in accordance with A.R.S. §§ 49-1017 and 49-1018.

R18-12-902. Monitored Natural Attenuation (MNA) Account

A. Monitored natural attenuation account. Monies in the monitored natural attenuation account created under A.R.S. § 49-1015.01(D) and deposited in the account on July 1, 2011, may be used by the director to perform corrective actions in accordance with R18-12-903.

B. Disposition of unused monitored natural attenuation account funds. Upon LUST case closure in accordance with R18-12-263.03(F) of LUST sites eligible for the MNA Program in accordance with R18-12-903, the monies remaining within the account will be transferred into the regulated substance fund.

R18-12-903. Monitored Natural Attenuation (MNA) Program

A. MNA Program eligibility. An UST owner or operator, or a person who undertakes corrective actions pursuant to A.R.S. § 49-1052(I) may request that the Department perform corrective actions in accordance with A.R.S. § 49-1015.01(D) beginning July 1, 2011, if the following conditions occur:
1. The UST release or releases of a regulated substance were reported to the Department before July 1, 2006; and are eligible for the assurance fund in accordance with A.R.S. § 49-1052;
2. Removal or control of the source of contamination is complete, to the extent practicable;
3. The soil contamination associated with the release is at or below the applicable corrective action standards in accordance with R18-12-263.01;
4. Natural attenuation is occurring;
5. A corrective action plan conforming to R18-12-263.02, has been submitted and approved by the Department before July 1, 2010, in which monitored natural attenuation is all or a portion of the selected remedy; and
6. A MNA Program application in accordance with subsection (B) has been submitted and approved by the Department before July 1, 2010.

B. Contents of an MNA Program application. The MNA Program application shall be in a form prescribed by the Department and contain:
1. Information on the applicant;
2. Information on the applicable release(s);
3. Environmental media currently impacted by the applicable release(s);
4. A site vicinity map, site location map and a site plan;
5. The as built construction diagrams of existing monitoring wells;
6. A tabulation of soil and groundwater analytical results and water level data;

7. Documentation that removal or control of the source of contamination has been completed to the extent practicable;
8. Documentation that natural attenuation is occurring; and
9. Other information that may be pertinent to the MNA Program application approval.

C. Conditions for approval of a MNA Program application. After receipt of a MNA Program application submitted in accordance with subsection (A) and (B), the Department shall review and approve, deny or request modifications to the application. The Director may deny a MNA Program application if approval would present an imminent and substantial danger to public health, welfare or the environment. The Department may request additional information before acting on the application. The Department shall approve the application if the applicant has demonstrated to the Department's satisfaction that the information submitted under subsections (A) and (B) is true, accurate, and complete. Approval of an application under this Section means that a no further action letter as described in subsection (E) will be sent to the applicant and the Department will perform future corrective action in accordance with subsection (F).

D. Notice of approval of a MNA Program application. The Department shall provide written notice to the applicant that the MNA Program application has been approved by issuing a no further action letter in accordance with subsection (E).

E. Contents of no further action letter. The no further action letter shall notify the applicant of the following:

1. The Department is not requiring the applicant to perform additional corrective actions for soil or groundwater for the property at which the referenced UST release occurred;
2. The soil contamination associated with the release is at or below the applicable corrective action standards in R18-12-263.01;
3. The groundwater contamination associated with the release is greater than the applicable corrective action standards in R18-12-263.01;
4. The additional corrective actions will be performed by the Department as specified in subsection (F);
5. The Department shall not approve closure of the LUST case file under R18-12-263.03(D) until the applicable groundwater corrective action standards in R18-12-263.01, or the conditions of R18-12-263.04, are met for the groundwater contamination;
6. The conditions of subsection (G) that may result in rescinding the MNA Program application and no further action letter; and
7. The Department is requiring:
   a. A property access agreement from the UST owner or operator if they own the property, or from the person who undertakes corrective actions pursuant to A.R.S. § 49-1052(I), which allows the Department to access the property to perform the necessary corrective actions specified in subsection (F); and
   b. A transfer of ownership of monitor wells selected by the Department to be used to perform the corrective actions specified in subsection (F), from the UST owner or operator, or a person who undertakes corrective actions pursuant to A.R.S. § 49-1052(I) to the Department.
   c. The proper abandonment of monitor wells not selected by the Department for future monitoring, and
   d. The decommissioning of any remedial equipment not selected by the Department.

F. Additional corrective actions. The following corrective actions will be performed by the Department in accordance with A.R.S. §§ 49-1005, 49-1015.01 and 49-1017:

1. Activities related to monitoring the natural attenuation of the groundwater contamination related to the UST release;
2. Other necessary corrective actions in accordance with A.R.S. § 49-1005 and the rules made thereunder, if information, which was previously not known to the Department, is received by the Department which indicates that soil or groundwater contamination on the property at which the referenced UST release occurred does not meet the appropriate corrective action standard in accordance with R18-12-263.01; and
3. Other necessary corrective actions in accordance with A.R.S. § 49-1005 and the rules made thereunder, if site conditions change rendering monitored natural attenuation not adequate to meet the appropriate corrective action standard in accordance with R18-12-263.01.

G. Rescinding an approved MNA Program application and no further action letter. The Department may rescind the approval of the MNA Program application and no further action letter under subsection (C) and require the UST owner or operator to perform corrective actions pursuant to A.R.S. § 49-1005 and the rules made thereunder, if one of the following occurs:

1. Information submitted pursuant to subsections (A), (B) or (C) was inaccurate, false or misleading, or
2. Upon written request by the applicant.